

Chapter 16: Improvement, regeneration and renewal

INTRODUCTION

- 16.1 In the Consultation Paper, we noted that there are in the TCPA 1990 and associated legislation a number of provisions that relate to the powers of public authorities to intervene positively to bring about change to the physical environment.¹ Many of these powers were introduced over the last seventy years as a result of various policy-driven initiatives by governments of various political complexions, aiming to bring about regeneration and renewal – largely but not exclusively in urban areas. It has thus been recognised that it is not enough to rely on schemes being promoted by private landowners; in some cases, the public sector, in one form or another, must intervene to bring about improvement.
- 16.2 The initiatives under this heading are broadly in three categories:
- 1) powers for public authorities to encourage or enable improvement works to be carried out by private landowners;
 - 2) powers for authorities to carry out such works on land remaining in private ownership; and
 - 3) powers for authorities to acquire private land, with a view to carrying out works themselves or passing it to others for them to do so.
- 16.3 The statutory powers are to be found scattered throughout the TCPA 1990 itself, and in a number of other statutes – notably the National Parks and Access to the Countryside Act 1949, the Local Authorities (Land) Act 1963, the Welsh Development Agency Act 1975, the Local Government, Planning and Land Act 1980, the Derelict Land Act 1982, the Housing Grants, Construction and Regeneration Act 1996, the Anti-social Behaviour Act 2003, and the Localism Act 2011. It may be noted in particular that the 1975 Act has for some years not related to the Agency itself, as that body was wound up in 2006; but it now provides the authority for action by the Welsh Ministers.
- 16.4 Under the first of the three headings above, local authorities have powers to make financial advances to promote development;² to require owners to maintain their land and buildings;³ to require them to remove or obliterate graffiti;⁴ and to remove high hedges.⁵ If owners do not comply with such requirements, the authority may enter

¹ Consultation Paper, paras 3.64 to 3.75.

² Local Authorities (Land) Act 1963, ss 3, 4.

³ TCPA 1990, Part 8, Ch 2.

⁴ TCPA 1990, ss 225F to 225K.

⁵ Anti-Social Behaviour Act 2003, Part 8.

the land and carry out the necessary action itself. The Welsh Ministers too may give financial assistance, advice, and take other action to promote development.⁶

- 16.5 Under the second heading, planning authorities have a general power to carry out development on private land;⁷ and a slightly oddly assorted collection of specific powers to reclaim or improve derelict land, to plant trees, and to provide garages and hard standings for vehicles.⁸ The Welsh Ministers may carry out reclamation and improvement works.⁹
- 16.6 Under the third heading, planning authorities may acquire land for planning purposes;¹⁰ and the Welsh Ministers have similar powers.¹¹

Obsolete provisions

- 16.7 Alongside the powers noted above, which at least can be used and are still used – albeit in some cases not frequently – there are a number of statutory provisions that have been used rarely or not at all since they were first introduced; or which were used initially but not in recent years.
- 16.8 There have been a number of procedures introduced to enable public authorities to bring about new development on a large scale, usually by the creation of special bodies in place of the conventional planning authorities – perhaps in recognition of the fact that democratically controlled local authorities seem to be less effective than new executive agencies specifically created as agents of change. And in most cases planning control could be exercised either by the special body thus created, or by the Secretary of State (now the Welsh Ministers).¹²

Our recommendations

- 16.9 In Chapter 16 of the Consultation Paper, we outlined the powers that enable authorities to intervene in respect of individual buildings and plots of land in private ownership, and made some minor recommendations as to the way in which they should operate.¹³ We also described the powers that used to exist to enable them to deal with graffiti and fly-posting, and proposed their reintroduction.¹⁴ And we also explored briefly the scope of various area-based initiatives aimed at bringing about regeneration, and suggested that they were no longer required. These proposals were generally welcomed by those who responded.

⁶ TCPA 1990, ss 304, 304A; Welsh Development Agency Act 1975; Derelict Land Act 1982, s 2.

⁷ Local Authorities (Land) Act 1963, s 2.

⁸ National Parks and Access to the Countryside Act 1949, s 89; Local Authorities (Land) Act 1962, s 5; Derelict Land Act 1982, s 3.

⁹ Welsh Development Agency Act 1975, s 16; Derelict Land Act 1982, a 2.

¹⁰ TCPA 1990, Pt 9.

¹¹ TCPA 1990, s 228; Welsh Development Agency Act 1975, ss 16, 21A.

¹² TCPA 1990, ss 7, 8; New Towns Act 1981 s 7.

¹³ Consultation Paper, paras 16.7 – 16.43.

¹⁴ Consultation Paper, paras 16.44 – 16.55.

- 16.10 In this Chapter, we outline our recommendations as to those matters, as well as note our recommendation for the inclusion in the Bill of the provisions relating to the compulsory acquisition of land for planning purposes, currently in Parts 9 to 11 of the TCPA 1990.
- 16.11 Finally, we touch upon the other statutory provisions relating to regeneration, improvement and renewal.

IMPROVEMENT OF UNSIGHTLY LAND AND BUILDINGS

- 16.12 Where land is in a condition which causes harm to the amenity of the local area, planning authorities may rely on two provisions to ensure that the land is improved. These include powers:
- 1) to require the owner or occupier of land that is “adversely affecting the amenity of the authority’s area” to take steps to remedy its condition, and in default to carry out such works itself (under sections 215 to 219 of the TCPA 1990);¹⁵ and
 - 2) to undertake works on any land which is “derelict, neglected or unsightly” (or likely to become so) to reclaim or improve the land, and in default to acquire it (under section 89 of the National Parks and Access to the Countryside Act 1949).

Section 215 notices

We provisionally proposed that the Bill be drafted to make clear that a notice under section 215 of the TCPA 1990, requiring land to be properly maintained, can be served where the condition of the land: (1) is adversely affecting the amenity of part of the authority’s area or the area of an adjoining authority; and (2) does not result in the ordinary course of events from, the lawful carrying on of continuing operations on that land or a continuing use of that land that is lawful (Consultation Question 16-1).

- 16.13 A notice under section 215 of the TCPA 1990 can be served by a planning authority on the owner and occupier of land the condition of which appears to affect the amenity of the authority’s area (or that of a neighbouring authority). Such a notice will set out the steps that should be taken to remedy the condition of the land and the period within which they should take place.¹⁶ A recipient of such a notice can either comply with its requirements, appeal against it (on any of four grounds specified in the Act),¹⁷ or be prosecuted for failure to comply.¹⁸ Authorities may also carry out the specified

¹⁵ TCPA 1990, s 215.

¹⁶ TCPA 1990, s 215(1). Note that “land” includes “building” (TCPA 1990, s 336).

¹⁷ TCPA 1990, s 217.

¹⁸ TCPA 1990, s 216.

works, and recover the expenses of doing so from the owners (or from future owners).¹⁹

16.14 In the Consultation Paper, we noted that the grounds of appeal, set out in section 217, include:

- 1) that the condition of the land to which the notice relates does not adversely affect the amenity of the planning authority's area; or
- 2) that the condition of the land results "in the ordinary course of events" from lawful uses or operations carried out on the land.

16.15 The second ground reflects the fact that many perfectly lawful uses of land – for example, scrap dealers' premises, and many industrial sites – are such that the land is inevitably somewhat unsightly. Section 215 is not aimed at those, but rather at land that is in poor condition otherwise than as the inevitable result of its lawful use – such as overgrown gardens and other open land, semi-derelict factories, and vacant houses.²⁰

16.16 Where the second ground of appeal can be substantiated, the appeal is bound to succeed, and the notice be quashed. An authority should therefore never serve a notice in such a case in the first place. We therefore suggested that section 215 should be amended to reflect this.²¹

16.17 Of 31 consultees who responded to this proposal, 26 agreed with it, largely without comment. Two consultees disagreed.

16.18 Blaenau Gwent CBC argued that it would place undue pressure on planning authorities considering the service of such notices, as it would require them to examine the "planning history of every site" and render section 215 "very difficult to use". However, we are not proposing any substantive change to the law, as the authority would have to consider the history of the site if called upon to respond to an appeal under ground (b). The only result of the change we are proposing would be to ensure that the authority considers the history of the site at the outset, rather than awaiting a ground (b) appeal.

16.19 In response to this proposal, Jordan Whittaker raised a slightly different point, relating to the problem that may arise where the unsightly condition of land is said to be the result of action by a third party. He pointed out that the section 215 procedure penalises the owner or occupier of land that has become unsightly due to the action of a third party and suggested that sections 215 and 217 be amended to allow for an owner to appeal against a notice on the grounds that the condition of the land was due to the act of a third party – and to prevent an authority serving a notice in such a case in the first place. He considered that this would be of assistance to landowners whose land has become unsightly as the result of illegal fly-tipping, and would prevent

¹⁹ TCPA 1990, s 217.

²⁰ Consultation Paper, para 16.17.

²¹ Consultation Paper, para 16.18.

authorities serving notice in such cases and then prosecuting landowners for non-compliance.

- 16.20 He drew attention, in particular, to section 59 of the Environmental Protection Act 1990, which allows a waste regulation authority to require the occupier of land on which controlled waste has been deposited to remove it within 21 days, but also requires the magistrates' court to quash the notice where it is satisfied that the occupier had neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste on the land.
- 16.21 We understand the concern expressed by Mr Whittaker. Where the untidy state of land is said to be due to the action of a third party, the authority may or may not be aware of this. And it does seem unsatisfactory for a landowner to end up having to pay for the cost of remedying environmental degradation caused by a third party. On the other hand, it is desirable for owners to have an incentive to take steps to prevent their land from becoming in poor condition in the first place.
- 16.22 Section 219 already provides that any expenses paid by the landowner in complying with the notice, or paid by the owner to the authority to reimbursing it for carrying out the required works, are deemed to have been paid at the request of the person responsible for the state of the land. It is therefore, theoretically, possible for the owner to recover the money from the third party; but, pending such recovery, the owner is out of pocket. It might be helpful, therefore, for the authority to have a power (but not a duty) to recover the amount directly from the third party – where the third party can be identified. However, we suspect that the number of cases where that would apply would be very small.
- 16.23 However, that does not deal with the alternative position – likely to be more common in practice – where it can be shown that the state of the land is the responsibility of a third party, but that third party either cannot be identified or is unable to pay. It might seem sensible to introduce a further provision preventing the authority from recovering the cost of remedial works from the owner in such a case. However, that would mean that in many such cases the authority would end up not being able to recover the cost of the works from anyone, which might deter it from taking action. It would also discourage owners from protecting their land against such degradation in the first place.
- 16.24 A further problem may arise where the untidy state of land arises as a result of waste unlawfully deposited by a third party. If the authority takes action under section 59 of the 1990 Act, the occupier of the land may be able to escape liability, as noted above. But if the authority takes action under section 215 of the TCPA 1990, the owner or occupier will be liable to take remedial action, or to pay the authority to take such action. That seems unfair.
- 16.25 The more satisfactory remedy would therefore be to introduce a further restriction on the use by an authority of its power under section 215, whereby it may not do so where the conditions of the land results from the unlawful deposit of controlled waste or extractive waste in contravention of section 33 of the 1990 Act. That would ensure that an authority in such a case would have to take action under the 1990 Act, with all the consequences that flow from such action. The use of Section 215 would therefore be reserved for cases of land that has become “untidy” or “injurious to

amenity”; more serious cases involving fly-tipping would be dealt with under the 1990 Act.

Recommendation 16-1.

We recommend that section 215 of the TCPA 1990 should be restated so as to make clear that a notice requiring land to be properly maintained can be served where the condition of the land:

- (1) is adversely affecting the amenity of part of the authority’s area or the area of an adjoining authority;**
- (2) does not result in the ordinary course of events from, the lawful carrying on of continuing operations on that land or a continuing use of that land that is lawful; and**
- (3) is not the result of the unlawful deposit of controlled waste or extractive waste in contravention of section 33 of the Environmental Protection Act 1990.**

We provisionally proposed that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that was lawful at the time it was done but is no longer lawful (Consultation Question 16-2).

- 16.26 In relation to the second limb of the test set out above, which refers to the carrying on of operations or a use of land which is lawful, we suggested that it should be possible to issue a section 215 notice in relation to land that was damaged by virtue of operations or activities which were lawful at the time, but which are no longer so.²²
- 16.27 We received 26 responses to this proposal, of which 25 supported it, largely without any further comment.
- 16.28 Three consultees expressed concern about the potential consequences of such a proposal. The Institution of Civil Engineers noted that it can be unclear at what point something that was once lawful ceases to be so, and suggested that reliance on such an imprecise concept might result in more problems for the planning authority than it would solve.
- 16.29 We agree that the question of whether a particular permission remains “live” may add an additional layer of complexity to the process of issuing a section 215 notice. However, this suggestion does not impact on the ability of an owner or occupier to appeal against a notice on the ground that the condition of the land results from a use of the land that is still lawful, albeit no longer being made. If an authority wishes to use a notice to remedy damage to land caused by a use that was lawful at the time, and may or may not still be lawful, it will have to form a judgment. If the matter is

²² Consultation Paper, para 16.19.

unclear, the authority will likely desist. However, the proposed amendment does give an authority a chance to remedy such damage in some cases at least.

Recommendation 16-2.

We recommend that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that were lawful at the time, but are no longer lawful.

We provisionally proposed that a notice under the provision in the new Code replacing section 215: (1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); (2) should be “issued” (rather than “served” as at present), with a copy served on all those responsible for the maintenance of the land in question; and (3) should contain a notice as to the rights of any recipient to appeal against it (Consultation Question 16-3).

- 16.30 Sections 215(3) and (4) of the TCPA 1990 require planning authorities to specify the period before which the notice takes effect, and that this period should not be less than 28 days after the service of the notice.
- 16.31 We noted in the Consultation Paper that these requirements are likely to cause some confusion in circumstances where notices are served on multiple recipients. We also observed that planning authorities were not explicitly required to point out to recipients of the notice that they had a right to appeal against it. We suggested that both omissions created uncertainty for recipients and could unfairly hinder them from appealing a notice. This echoes similar proposals we made in relation to various enforcement notices.²³
- 16.32 All 28 consultees who responded to this proposal agreed with it. The Royal Town Planning Institute (RTPI) observed that the proposal would “expedite the process” and “make it explicit about the rights of all recipients to appeal”. Huw Williams (Geldards LLP) also suggested that it ensured “consistency across the whole range of enforcement and cognate notices”.

²³ See Recommendations 12-8, 12-17, .

Recommendation 16-3.

We recommend that a notice under the provision in the new Bill replacing section 215:

- (1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service);**
- (2) should be “issued” (rather than “served” as at present), with a copy served on all those responsible for the maintenance of the land in question; and**
- (3) should contain a notice of the rights of any recipient to appeal against it.**

Appeals against section 215 notices

We provisionally proposed that the Code should make it clear that all appeals against section 217 notices are normally to be determined by inspectors (Consultation Question 16-4).

- 16.33 Appeals against a section 215 notice used to be made to the magistrates’ court, on the grounds of appeal set out in subsection 217(1) of the TCPA 1990. They are now made to the Welsh Ministers, as a result of changes made by the Planning (Wales) Act 2015, which also provided them with powers to make regulations for the procedure at such appeals.²⁴
- 16.34 We noted in the Consultation Paper that the power in paragraph 1 of Schedule 6 to the TCPA 1990, to determine the classes of appeals that are to be determined by an inspector, had not been extended to appeals under section 217.²⁵ This prevents such appeals from being determined by inspectors, which we considered to be unfortunate, as these appeals are particularly suitable for determination by inspectors. We proposed that this omission be rectified.
- 16.35 All 25 of the consultees who responded to this proposal agreed. The RTPI noted that “inspectors are appropriately trained to assess impact on the amenity of land” and that “recourse to inspectors would appear to be appropriate”. Carmarthenshire CC also suggested that directing appeals towards inspectors would “provide an independent viewpoint” for the determination of such appeals.

²⁴ TCP (Referred Applications and Appeals Procedure) (Wales) Regulations 2017, which allow the Welsh Ministers to determine the procedure to be followed with regards to such appeals, identify the information which is required to be submitted, and determine the classes of persons capable of making representations in the course of the appeal.

²⁵ Consultation Paper, paras 16.23 – 16.26. See also **Recommendation 11-2.**

Recommendation 16-4.

We recommend that the Bill should make it clear that all appeals against section 217 notices are normally to be determined by inspectors, in line with Recommendation 11-2.

Overlap between section 215 of the TCPA 1990 and section 89 of the 1949 Act

We provisionally proposed that the new Planning Code include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to mining subsidence): (1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority's intention to carry out remedial works; (2) to carry out the works specified in the notice itself, either on terms agreed between it and the owner and occupier of the land or where no response is received to the notice; (3) to recover the cost of such works from the owner, or to make the cost a charge on the land; and (4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement (Consultation Question 16-5).

- 16.36 In our Consultation Paper, we noted that the powers available to planning authorities under section 89(2) of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") are similar to those available under section 215 of the TCPA 1990. In particular, under the 1949 Act they are able to carry out works to land that is "derelict, neglected or unsightly", or is likely to become derelict, neglected or unsightly as a result of former mining operations. This is similar to land whose condition is adversely affecting the amenity of the neighbourhood, which can be the subject of action under section 215.
- 16.37 It is to be noted that, despite the title of the 1949 Act, the powers under section 89 are not only available in relation to land within a national park, or even in the countryside, but can also be exercised in urban areas.
- 16.38 We observed that there are some differences between the two procedures. In particular, the powers that are available to a planning authority under section 89(2) of the 1949 Act but are not available to it under section 215 are as follows:
- 1) provided that it has obtained the consent of the owner, the authority may itself carry out remedial works on any land that is derelict, neglected or unsightly, regardless of whether or not the condition of the land arises as a result of its lawful use;
 - 2) provided that it has obtained consent, the authority may also carry out remedial works on any land that is likely to become derelict, neglected or unsightly by reason of the collapse of the surface due to former underground mining; and

- 3) the authority may acquire any land that is derelict, neglected or unsightly (or is likely to become derelict etc due to mining-related collapse) using compulsory powers or by agreement, for the purpose of carrying out remedial works.
- 16.39 On the other hand, there is no explicit provision enabling an authority to use its powers under section 89 in relation to a building. There is no right of appeal in relation to any action under section 89. And the powers under section 89 may only be exercised in relation to Crown land with the consent of the relevant authority.²⁶
- 16.40 Because of its wider scope, we suggested that the power under section 89(2) was still of some value. However, we suggested that it would be more satisfactory for the existing powers of an authority under section 89(2) of the 1949 Act to be included in the Planning Code alongside those currently available to it under section 215 of the TCPA 1990. Other than in relation to the matters noted above (buildings and Crown land), that would not of itself give authorities any more powers than they currently possess, but would bring those powers together into a coherent scheme.
- 16.41 We suggested that one useful additional power would be power to deal with land whose owner cannot be found – not least because such land is often in the greatest need of remediation. In such cases the authority cannot require the owner to take action under section 215 of the TCPA 1990; nor can it obtain the consent of the owner before carrying out the necessary work itself under section 89(2). We provisionally considered that this omission should be rectified.
- 16.42 Under a new procedure replacing section 89(2) an authority could issue a notice stating its intention to carry out works on land whose condition is adversely affecting the amenity of the neighbourhood,²⁷ serving copies on owners and occupiers (where known) and displaying a site notice as appropriate. The authority could then carry out those works, either on terms agreed between it and the owner and occupier of the land or where it had received no response to the notices within a specified period.
- 16.43 As with the current procedure under section 215, the cost of the works carried out could be recovered from the owner, where practicable, or made a charge on the land. And, as with the existing procedure under section 89, where the authority does not receive a satisfactory response to such a notice, it would then be able to acquire the land in question.
- 16.44 Of the 27 consultees who responded to this proposal, 23 agreed, largely without comment. Allan Archer noted that “the two powers are closely related” and suggested that they should “both be included, side by side if possible, in the Planning Code”. Pembrey and Burry Port Town Council also described the proposal as “beneficial”.
- 16.45 Three consultees disagreed with the proposal. The Central Association of Agricultural Valuers suggested that extending the scope of section 89(2) to allow planning authorities to charge owners for works undertaken on their behalf, where

²⁶ National Parks etc Act 1949, s 101(7).

²⁷ Or on land that is likely to become derelict, neglected or unsightly due to the collapse of the surface as the result of former underground mining operations (as with the current section 89).

damage is caused by the owner or occupier's lawful use of the land, might result on unfair burdens being imposed upon them.

- 16.46 However, the power to carry out works under section 89(2) applies only where the owner has consented – and such consent will presumably only be granted subject to negotiation as to who pays the costs of them. Further, as the works in question are being undertaken to “repair or improve” land which would otherwise be “derelict, neglected or unsightly”, and are therefore likely to increase its value, it seems fair in principle to require owners to bear such costs. In addition, as with the current procedure under section 215, the cost of the works carried out need not be immediately recovered. Instead, it could be registered as a charge on the land in the Local Land Charges Register, to be met when the land changes hands. There would thus be no immediate burden on landowners who are unable to meet the costs of the works (or those whose identity is unknown), but the land would still be improved.
- 16.47 The Law Society pointed out, correctly, that section 89(2) of the 1949 Act was originally introduced in its present form by the Derelict Land Act 1982, which conferred powers to deal with derelict land on the Welsh Development Agency (WDA) and local authorities. The powers of the WDA in due course passed to the Welsh Ministers. It therefore suggested that any reconsideration of section 89(2) should be postponed until a future phase of the codification exercise dealing with regeneration.
- 16.48 We share the hope that in due course the Part of the Act containing the provisions discussed in this Chapter will include all powers relating to regeneration and renewal.²⁸ However, in the meantime, we observe that the powers available under section 89 are very similar to those available under section 215. We therefore remain of the view that it would be helpful for users of the system, and in particular, planning authorities, if all the powers under section 89(2) of the 1949 Act are brought into the Bill, alongside those currently in section 215 of the TCPA 1990.

²⁸ See paras 16.98 to 16.111.

Recommendation 16-5.

We recommend that the Bill should include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations):

- (1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority's intention to carry out remedial works;**
- (2) to carry out itself the works specified in the notice, either**
 - on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or**
 - where no response is received to the notice;**
- (3) to recover the cost of such works from the owner, or to make them a charge on the land; and**
- (4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.**

Landscaping

We provisionally proposed that the new Planning Code include powers, equivalent to those currently available under section 89(1) of the 1949 Act, to enable a planning authority: (1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land; (2) to carry out itself the works specified in the notice, either on terms agreed between it and the owner and occupier of the land; or where no response is received to the notice; and (3) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement (Consultation Question 16-6).

- 16.49 Section 89(1) of the 1949 Act enables planning authorities to “plant trees on land in their area for the purpose of preserving or enhancing the natural beauty thereof”. This provision allows authorities to plant trees (defined as including planting bushes, planting or sowing flowers, sowing grass and laying turf²⁹) and to undertake acts which “preserve the natural beauty of land...and its flora, fauna and geological and

²⁹ 1949 Act, s 114(3), and (2).

physiographical features.³⁰ As with section 89(2), the authority may acquire the land in question for such purposes.

- 16.50 We suggested that this procedure could usefully be included in the Planning Code, alongside the provisions currently in section 215 of the TCPA 1990 and s 89(1) of the 1949 Act. However, as with the previous Consultation Question, we suggested that they be amended to allow planning authorities to exercise the power where there is no identifiable owner. We also suggested replacing the reference to “tree planting” (even with its expanded definition, noted above) with a broader definition of the works that may be carried out – perhaps along the lines of those specified in section 5(2) of the Inner Urban Areas Act 1978.³¹
- 16.51 Of the 26 consultees who responded to this question, 21 agreed with it. The RTPI described the power as being capable of “being used positively to promote economic regeneration and serve the aims of wider sustainable development”.
- 16.52 Five consultees disagreed. The Central Association of Agricultural Valuers and Sirius Planning suggested that the provision in the 1949 Act which allows planning authorities to acquire land compulsorily for this purpose was an illegitimate use of public power and should be excluded from the scope of the provision. The Country Land and Business Association (CLA) expressed concern about the validity of works undertaken without the landowner’s consent or agreement. Carmarthenshire CC questioned whether it should be possible for an authority to recoup from the landowner the cost of exercising its powers under this provision.
- 16.53 On reflection, we consider that there is a distinction to be made between the use of powers under section 89(2) of the 1949 Act and those under section 89(1). The powers under section 89(2) – and indeed powers under section 215 of the TCPA 1990 – relate to land that has become unsightly or derelict, and whose appearance is harming the appearance of the surrounding area, and enable the authority to take remedial action to remove the problem. By contrast, powers under section 89(1) relate to land that may be already in an adequately satisfactory state, which the authority wishes to improve.
- 16.54 It makes sense for there to be a power to acquire land in the first category, if necessary under compulsory powers, as that may realistically be the only way to ensure that it is improved and, just as important, that it does not become derelict again. Such problems not infrequently arise as a result of the owner of land being unwilling to co-operate, or unable to do so due to limited resources, or being absent, or simply unknown. In such cases, acquiring the land may be necessary.
- 16.55 However, in the second category, although the authority may perfectly properly wish to improve the land, perhaps as part of a wider regeneration or improvement scheme, there seems no basis on which to justify compulsory acquisition, except where the owner is unknown after reasonable enquiry having been made. We therefore consider that, in relation to an authority exercising its improvement powers under what is currently section 89(1), it should have power to acquire the land involved by

³⁰ 1949 Act, s 114(3).

³¹ Consultation paper, paras 16.42 to 16.43.

agreement, and using compulsory powers where the owner is unknown, but not otherwise. There is in any event a power of compulsory purchase available where the planning authority wishes to acquire land for the proper planning of the area.³²

- 16.56 The Law Society disagreed with this proposal, on the same basis as it disagreed with the previous proposal.³³ We understand the concern, but consider that it would be a worthwhile to include this power in the Planning Code, pending any more far-reaching reform of the law relating to regeneration and renewal.

Recommendation 16-6.

We recommend that the new Planning Code should include powers, equivalent to those currently available under section 89(1) of the 1949 Act, to enable a planning authority:

- (1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land;**
- (2) to carry out itself the works specified in the notice, either**
 - on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or**
 - where no response is received to the notice; and**
- (3) to acquire the land for the purpose of carrying out such works by agreement, or using compulsory powers where the owner cannot be found after reasonable enquiries have been made.**

GRAFFITI AND FLY-POSTING

We provisionally proposed that the Code should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting, by enabling planning authorities: (1) to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it; (2) to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence; and (3) in either case, to take direct action where necessary, and recharge those responsible where appropriate (Consultation Question 16-7).

- 16.57 One specific form of environmental degradation that has received particular attention in recent years is the defacing of buildings and other structures with graffiti and

³² See para 16.103.

³³ See para 16.47.

flyposting. In the Consultation Paper, we summarised what we described as the slightly curious history of the legislation in this area. In short, there were in force in Wales provisions enabling authorities to deal specifically with graffiti (from 2004 to 2014) and flyposting (from 2007 to 2014). There are no such provisions in force at present.

16.58 We provisionally suggested that it would be appropriate to reintroduce some form of control, broadly similar to the provisions introduced into the TCPA 1990 by the Localism Act 2011 in England, enabling authorities:

- 1) to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the owners or occupiers of the land affected to remove it; and
- 2) to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures (such as applying stippled paint, which makes fly-posting more difficult) to minimise recurrence.

16.59 We considered that it would be appropriate to include such provisions in a freestanding set of regulations, not least because it is likely that they would need to be amended from time to time in the light of experience. And we recognised that the details of the provisions to be included in such regulations would need to be the subject of further detailed consideration, and in due course a separate consultation.

16.60 We therefore suggested that the most appropriate way forward at this stage would be to introduce in the new Bill a power enabling Ministers to introduce regulations to facilitate the removal of graffiti and flyposting. If the Welsh Ministers were to take advantage of such a power, that would enable the production of regulations forming a separate self-contained code governing the removal of graffiti and fly-posting – analogous to the regulations relating to the display of advertisements and the carrying out of works to protected trees.³⁴

16.61 Of the 29 consultees who responded to this question, 22 were in agreement. The Law Society commented:

We agree that powers to address graffiti and fly-posting should be introduced and that a self-contained code made contained in regulations offer a more flexible way of addressing a persistent but also constantly evolving problem.

16.62 Five consultees raised objections to the principle of the system that has evolved in England and Wales over the years and used to operate in Wales until recently – notably in relation to the principle of making the owner or occupier of land to some extent responsible for sorting out the problems of flyposting and graffiti by third parties. We consider that such objections, although entirely understandable, can best be considered when regulations are made in due course, along with possible procedures to minimise any hardship for owners of vulnerable properties. At this stage we are only suggesting that the Welsh Ministers should have regulation-making

³⁴ Consultation Paper, paras 16.44 to 16.55.

powers; there will no doubt be considerable discussion as to how those powers should be exercised.

- 16.63 The North and Mid Wales Association of Local Councils suggested that any enforcement system should also include the possibility of fixed penalty notices being served by town and community councils, who have taken over the street scene from principal authorities. That seems to be a sensible suggestion. Here too, appropriate regulation-making powers could be introduced to enable that to occur. The practicalities and details can then be considered when regulations are made in due course.

Recommendation 16-7.

We recommend that the Bill should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting,

(1) by enabling planning authorities:

- **to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it;**
- **to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence; and**
- **in either case, to take direct action where necessary, and recharge those responsible where appropriate; and**

(2) by enabling town and community councils to serve fixed penalty notices in appropriate cases.

AREA-BASED INITIATIVES GENERALLY

- 16.64 In the second half of Chapter 16 of the Consultation Paper, we mentioned briefly a variety of legislative regimes that have created powers for central Government (now the Welsh Ministers) to set up various types of special authorities and other arrangements with the aim of promoting regeneration or improvement.

- 16.65 We explained that each of the various initiatives has been used only to a very limited extent, or not at all, in Wales. Further, experience in recent decades suggests that new initiatives to facilitate urban regeneration are implemented either by the use of normal planning legislation – in particular, through the development plan process – or are accompanied by the introduction of completely new legislation, designed to reflect the particular features of the policy initiative that is to be introduced. We therefore found it unlikely that the various pieces of legislation highlighted in the remainder of the Chapter would be utilised in the future.

- 16.66 We noted that the main body of planning legislation, and in particular the TCPA 1990, contains relatively few references to these various area-based regimes. The main link is in the definition of a local planning authority within an area that is subject to one of them. So, for example, an enterprise zone authority or an urban development corporation can, at least in theory, be designated as the planning authority within its area – although it is noticeable that no enterprise zone authority ever has been so designated, and nor has any urban development corporation in Wales.
- 16.67 We also noted that the legislation governing each of these special types of area is clearly linked to mainstream planning legislation, if only by the nature of the subject matter; and that this codification exercise is an ideal time to review or abolish it. It is easy to put off such a review indefinitely, but to do so now would result in the Welsh statute book continuing to contain legislation that is extremely unlikely ever to be used; this is not helpful for those devising future legislation or, more important, for users.³⁵
- 16.68 Carmarthenshire CC disagreed with this approach, observing in each case that, although such designations have not been much used in the past, retaining them keeps all options open to local authorities going forward. However, it suggested that the detailed wording of each set of provisions should be considered, to ensure they are fit for purpose.
- 16.69 The Law Society, on the other hand, observed:
- We agree that these are all powers that can be removed. Future proposals for special purpose authorities are unlikely to be so closely aligned to the structures of these bodies that any of them could be revived without significant amendment. It is also desirable that future legislation starts with a clean slate, and meanwhile the Code will be shorter and simpler if the existing models are not retained.
- 16.70 These opposing views encapsulate the two competing approaches to this issue. It is indeed probable that the detailed wording of each set of statutory provisions is not fit for purpose; but that begs the question of what will be the purpose for which they will be required. We therefore remain of the view that it would be a significant improvement to the legislation in this area if all of these redundant provisions are amended so that they no longer apply in Wales.

Enterprise zones

We provisionally proposed the amendment of Part 18 of and Schedules 32 to the Local Government, Planning and Land Act 1980 (enterprise zones) and the provisions relating to enterprise zones in the TCPA 1990 and related legislation so that no longer apply in relation to Wales (Consultation Question 16-8)

- 16.71 In the Consultation Paper, we noted that there are two distinct categories of “enterprise zones”, arising under quite distinct legal regimes:

³⁵ Consultation Paper, paras 16.56 to 16.60.

- 1) those designated by the Secretary of State under powers in the Local Government, Planning and Land Act 1980 (“the 1980 Act”); and
 - 2) those recognised by the Treasury under the Capital Allowances Act 2001, as amended by the Finance Act 2012.³⁶
- 16.72 As to the first, powers were introduced, in Schedule 32 to the 1980 Act, to enable the Secretary of State (now the Welsh Ministers) to invite a local authority to adopt an enterprise zone scheme.³⁷ The scheme could appoint the “enterprise zone authority” to be the local planning authority, if it was not already; and could grant planning permission for the development specified in it. Section 6 of the TCPA 1990 provided that an order designating a zone could specify that the “enterprise zone authority” was to be the planning authority in relation to specified categories of development.
- 16.73 The scheme also exempted occupiers of non-domestic premises from liability to pay rates and introduced 100 per cent capital allowances for industrial and commercial buildings. It also conferred benefits in relation to development land tax, industrial development certificates, and industrial training levies.
- 16.74 In the following decades, some 35 orders were made under Schedule 32 to the 1980 Act, between them designating just over 100 zones. Of those, four orders designated 15 zones in Wales.³⁸ No order designated as a planning authority any body that was not already the planning authority. Each order lasted for ten years. No order has been made since 1996, and none in Wales since 1985. It follows that no enterprise zone has existed under the 1980 Act in Wales for over 20 years.
- 16.75 As to the second type of “enterprise zone”, a new scheme was introduced by the Finance Act 2012, enabling expenditure on certain plant or machinery to attract tax advantages in respect of capital allowances, if it is in an assisted area designated in an order by the Treasury within an enterprise zone.³⁹ There are currently eight zones in Wales that have been designated under these provisions – in the Capital Allowances Act 2001, as amended by the 2012 Act.⁴⁰ Their extent is shown on maps that can be accessed via the Treasury website and the Welsh Government’s “Business Wales” website.⁴¹
- 16.76 The recognition of an enterprise zone under the provisions of the 2001 Act has no direct implications for the planning system, although it is likely that the planning

³⁶ There is a third type of enterprise zone, under the Enterprise Zones (Northern Ireland) Order 1981 – presumably as an offshoot of the initiative that led to the designation of enterprise zones under the 1980 Act. This scheme is not relevant for present purposes.

³⁷ Consultation Paper, paras 16.63 to 16.66.

³⁸ Swansea (the first zone to be designated in Great Britain, under 1981 SI 757) and 13 on the shores of the Milford Haven Waterway (1984 SI 443/ 44) and Lower Swansea Valley (1985 SI 137).

³⁹ Consultation Paper, paras 16.67 to 16.71.

⁴⁰ Anglesey, Cardiff Airport and St Athan, Central Cardiff, Deeside, Ebbw Vale, Haven Waterway, Port Talbot Waterfront, and Snowdonia.

⁴¹ <https://businesswales.gov.wales/enterprisezones/zones>

authority will be more sympathetic to new development, and may use other tools such as local development orders to assist business start-ups.

- 16.77 We observed that no more enterprise zones were likely to be designated under the powers in the 1980 Act, and suggested that no purpose would be served by retaining the possibility of such designations. Further, the existence of two incentive regimes with the same title but set up under quite different legislation only goes to emphasise the need to remove redundant provisions from the statute book.
- 16.78 We therefore provisionally considered that the legislation relating to the existence of enterprise zones under the 1980 Act is redundant, and could be amended so that it no longer applies in Wales. And section 6 of the TCPA 1990, under which an enterprise zone authority may be designated as the local planning authority in its area, need not be restated in the Code.
- 16.79 This would have no effect whatsoever on the enterprise zones already designated in Wales under the Capital Allowances Act 2001, nor on the possibility of further zones (in England or Wales) being recognised by the Treasury under that legislation at some point in the future.
- 16.80 Of the 24 consultees who responded to this suggestion, all but one were in agreement. As before, Carmarthenshire CC argued that retaining these powers provide greater numbers of options open to local authorities going forward. Again, as before, we do not agree.

Recommendation 16-8.

We recommend the amendment of Part 18 of and Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones), and the provisions relating to enterprise zones in the TCPA 1990 and related legislation, so that they no longer apply in relation to Wales.

New town development corporations

We provisionally proposed the amendment of the New Towns Act 1981 and the provisions relating to new towns in the New Towns and Urban Corporations Act 1985, the TCPA 1990, the Housing and Regeneration Act 2008 and related legislation, so that they no longer apply in relation to Wales (Consultation Question 16-9).

- 16.81 In the Consultation Paper we summarised briefly the history of new towns, noting that ten new towns in England were created in 1946-50, a further five in 1961-64, and a final six in 1967-70. In Wales, Cwmbran New Town was designated in 1949, and the Development Corporation was subsequently wound up in 1988.⁴² Newtown New Town (in Powys) was designated in 1967,⁴³ and the functions of the Development Corporation were subsequently transferred to the Development Board for Rural

⁴² 1949 SI 2054; 1988 SI 265

⁴³ London Gazette, 28 December 1967; 1967 SI 1893.

Wales.⁴⁴ A third Welsh new town was proposed in 1969, at Llantrisant; but that proposal never came to fruition.⁴⁵

- 16.82 The New Towns and Urban Development Corporations Act 1985 then provided for the completion of the new towns programme, and the eventual disengagement from it of the public sector. It also amended the functions of the Commission, and made provision for its eventual winding-up. This process was taken a step further by the Housing and Regeneration Act 2008, which provided for the final abolition of the Commission.⁴⁶
- 16.83 We concluded that almost the whole of the New Towns Act 1981, as amended by the 1985 and 2008 Acts, is redundant. We therefore provisionally proposed that the Act should be amended so that it no longer applies in Wales. The provisions of the 1985 and 2008 Acts are largely now spent, and need not be retained either.⁴⁷
- 16.84 Of the 25 consultees who responded to this suggestion, all but one were in agreement. No consultee identified any provision of the Act that needed to be retained.

Recommendation 16-9.

We recommend the amendment of the New Towns Act 1981, and the provisions relating to new towns in the New Towns and Urban Corporations Act 1985, the TCPA 1990, the Housing and Regeneration Act 2008, and related legislation, so that they no longer apply in relation to Wales.

Urban development corporations

We provisionally proposed the amendment of Part 16 of and Schedules 26 to 31 to the Local Government, Planning and Land Act 1980 (urban development areas and urban development corporations), and the provisions relating to urban development corporations in the New Towns and Urban Development Corporations Act 1985, the TCPA 1990, the Leasehold Reform, Housing and Urban Development Act 1993, and related legislation, so that no longer apply in relation to Wales (Consultation Question 16-10).

- 16.85 In the Consultation Paper, we outlined the origin and purpose of urban development areas, set up under Part 16 of the Local Government, Planning and Land Act 1980.⁴⁸

⁴⁴ Development of Rural Wales Act 1976, s 1. The functions of the Board were subsequently transferred to the Welsh Development Agency (Government of Wales Act 1998).

⁴⁵ HC debates, 13 May 1969.

⁴⁶ Housing and Regeneration Act 2008, s 50, Sch 5.

⁴⁷ Consultation Paper, paras 16.75 to 16.79.

⁴⁸ Consultation Paper, paras 16.80 – 16.82.

- 16.86 Only one urban development corporation (UDC) was ever set up in Wales. Cardiff Bay Development Corporation was set up in 1987, but (unlike all the English corporations) was not given the powers relating to planning policy and development management available to a local planning authority.⁴⁹ It oversaw the construction of the Cardiff Bay Barrage, and undertook a number of other successful projects before being dissolved on 31 March 2000.⁵⁰ Its management responsibilities were largely taken over by Cardiff Harbour Authority, as provided for by the Cardiff Bay Barrage Act 1993.
- 16.87 We found it unlikely that the urban development corporation procedure will be used again in Wales. It followed that Part 16 of the 1980 Act, and the associated Schedules to that Act, were redundant, at least in relation to Wales, along with the other legislation that has amended those provisions over the subsequent years. And section 7 of the TCPA 1990, relating to the role of an urban development corporation as a local planning authority, need not be restated in the Code.⁵¹
- 16.88 Of the 25 consultees who responded to this suggestion, 22 were in agreement. The Institution of Civil Engineers Wales objected, observing:
- Urban Development Corporations (UDC) should remain available for use in Wales. When large scale development is proposed, to be undertaken by a variety of developers, a UDC facilitates the stage management of the development and can avoid the situation of developers refusing to cooperate with each other to a useful end result. The Cardiff Bay development provided an excellent demonstration of this situation, in the way that all of the development was overseen; but current development in Cardiff under its LDP could so easily degenerate into the situation described.”
- 16.89 We recognise that the Cardiff Bay project has indeed been successful. However, it was very much a one-off situation and it is noticeable that the project was achieved despite the Cardiff Bay Corporation not being the planning authority. We remain of the view that it is unlikely that the existing legislation will be used in future. It is more likely that general regeneration powers will be created as a result of the possible review mentioned earlier, or else that specific projects will be the subject of private Bills.

⁴⁹ 1987 SI 646.

⁵⁰ See <https://www.cardiffharbour.com/achievements-of-the-regeneration-project/>

⁵¹ Consultation Paper, paras 16.80 – 16.84.

Recommendation 16-10.

We recommend the amendment of

- (1) Part 16 of and Schedules 26 to 31 to the Local Government, Planning and Land Act 1980 (urban development areas and urban development corporations), and**
- (2) the provisions relating to urban development corporations in the New Towns and Urban Development Corporations Act 1985, the TCPA 1990, the Leasehold Reform, Housing and Urban Development Act 1993, and related legislation**

so that they no longer apply in relation to Wales.

Housing action trusts

We provisionally proposed the amendment of Part 3 of the Housing Act 1988 (housing action trust areas), and the provisions relating to housing action trusts in the TCPA 1990 and related legislation, so that they no longer apply in relation to Wales (Consultation Question 16-11).

- 16.90 We noted in the Consultation Paper that housing action trust areas could be designated by the Welsh Ministers, as areas in which the living conditions of local residents and the social conditions and general environment could be improved by a specially constituted “housing action trust”. Once established, such a trust could be designated as the local planning authority in its area.⁵² The relevant legislation, Part 3 of the Housing Act 1988, applied to both England and Wales, and such areas could therefore have been designated in Wales.
- 16.91 In the event, only six areas were ever designated, between 1991 and 1994; all were in England (three in London, three elsewhere). None of the trusts were designated a local planning authority and they were wound up at various dates between 1999 and 2005.
- 16.92 Once again, therefore, we concluded that there seemed to be no prospect of such areas being designated in Wales in the future. Section 60(1) of the 1988 Act could therefore be amended to make it plain that Part 3 applies only to land in England; and section 9 of the TCPA 1990, relating to the role of a housing action trust as a local planning authority, need not be restated in the Code.⁵³
- 16.93 Of the 24 consultees who responded to this suggestion, all but one were in agreement. The RTPI and the National Trust both supported the proposed change, in the following terms:

⁵² TCPA 1990, s 9.

⁵³ Consultation Paper, paras 16.87 to 16.89.

Housing is now a devolved power, and the Housing (Wales) Act 2014 aims to improve the quality and standards of housing in Wales. No Housing Action Trust Areas have been designated in Wales; and regeneration policy funded via the Viable and Viable Places programme and the recently launched targeted regeneration investment policy are the appropriate mechanisms for tackling areas with serious housing and other social problems. Stock transfer of local authority housing and the release of subsidy to bring homes up to the Welsh Housing Quality Standard have been largely successful across Wales.

16.94 We are therefore minded to maintain the proposal.

Recommendation 16-11.

We recommend the amendment of

- (1) Part 3 of the Housing Act 1988 (housing action trust areas), and**
- (2) the provisions relating to housing action trusts in the TCPA 1990 and related legislation**

so that they no longer apply in relation to Wales.

Rural development boards

We provisionally proposed the amendment of Part 3 of and Schedule 5 to the Agriculture Act 1967 (rural development boards) and related legislation so that they no longer apply in relation to Wales (Consultation Question 16-12).

16.95 Finally, we described in the Consultation Paper the legislation, in Part 3 of and Schedule 5 to the Agriculture Act 1967, designed to deal with the problems and needs of rural areas of hills and uplands – in particular, the use of land in such areas for agriculture and forestry, improving public services, and the preservation of amenity and scenery there. The provision provided a power to set up rural development boards in such areas, to draw up a programme to deal with the problems and needs outlined above.

16.96 Only one board was ever set up, in the north of England in 1969, which was dissolved two years later. A second proposed board, in mid-Wales, was the subject of campaigns by the National Farmers' Union, which resisted it as a foreign implant from London. It never came into existence. We saw no likelihood of this statutory scheme ever being used in the future and proposed its repeal in relation to Wales.⁵⁴

16.97 Of the 23 consultees who responded to this suggestion, all but one were in agreement.

⁵⁴ Consultation Paper, paras 16.90 – 16.92.

Recommendation 16-12.

We recommend the amendment of Part 3 of and Schedule 5 to the Agriculture Act 1967 (rural development boards) and related legislation so that they no longer apply in relation to Wales.

ACQUISITION OF LAND FOR PLANNING PURPOSES

- 16.98 In the Consultation Paper, we noted that the general law of compulsory purchase is clearly linked to planning law, by virtue of its subject-matter. But it remains a substantial topic in its own right, considered by the Law Commission in a separate Consultation Paper some ten years ago.⁵⁵ We considered that it should not be included within the scope of the present exercise.⁵⁶ No-one suggested otherwise; and we continue to consider that this project should not extend to the general law of compulsory purchase and compensation..
- 16.99 However, we also noted that, in addition to that general law, a number of statutes relating to devolved matters contain provisions enabling the acquisition of land, either using compulsory powers or by agreement, for specific purposes related to the subject matter of the Act in question.⁵⁷ The TCPA 1990 is no exception, and section 226 empowers a local authority to acquire compulsorily any land for planning purposes. The remainder of Part 9 of the TCPA 1990 then elaborates that principle in more detail.
- 16.100 We observed that it would be possible to restate the provisions of Part 9 (and related provisions in Parts 10 and 11) in the new Bill. We considered, however, that this would add significantly to the complexity of the exercise and delay the production of the Bill. We accordingly concluded that it should not be included at this stage, but might later be included, possibly along with other provisions currently in the Welsh Development Agency Act 1975 and related legislation.⁵⁸
- 16.101 We have now revisited that conclusion, in the light of our other work on this project.
- 16.102 In the Consultation Paper, we suggested that, if all of our proposals were to be adopted, and the TCPA 1990 and related legislation consolidated as envisaged, it would be possible to repeal (in relation to Wales) the whole of the TCPA 1990 except for Part 9 and sections 251, 258, and 271 to 282.⁵⁹
- 16.103 The key provision of Part 9 is section 226, which enables a local authority to acquire land by compulsory purchase where it considers that to do so would facilitate the

⁵⁵ *Towards a Compulsory Purchase Code: (2) Procedure*, 2004, Law Com 291.

⁵⁶ Consultation Paper, para 3.118.

⁵⁷ For example, Public Health Act 1875, s 164; Forestry Act 1967, s 39; Highways Act 1980, s 239(3).

⁵⁸ Consultation Paper, para 3.120.

⁵⁹ Consultation Paper, paras 3.134, 11.71, and Appendix B, Table B-4.

carrying out of development, redevelopment or improvement of the land or where the land is required for a purpose that is necessary to achieve the proper planning of the area.⁶⁰ Land may be acquired by an authority by agreement, under section 227; and by the Welsh Ministers under section 228. And special rules apply where the land to be acquired forms part of a common.⁶¹

- 16.104 A local authority is defined to include a national park authority; and land may be held by a joint body.⁶² In other words, the “local authority” for the purposes of Part 9 of the TCPA 1990 is identical to the “planning authority” in the remainder of the Act.
- 16.105 Sections 232 to 235 deal with the appropriation, disposal and development of land acquired under Part 9.⁶³
- 16.106 Section 236 deals with the extinguishment of private rights of way, and other private rights over the land; sections 251 and 258 with the extinguishment of public rights of way. Sections 238 to 240 deal with the acquisition of consecrated land and burial grounds; section 241 with open spaces; and section 242 with overriding rights of tenants in possession of houses acquired under Part 9. Sections 271 to 282 provides for the extinguishment of the rights of statutory undertakers, with compensation payable in certain circumstances.
- 16.107 We consider that it would be relatively straightforward to incorporate the provisions of Part 9, and sections 251, 258, and 271 to 282 without any amendment other than purely as to drafting style.
- 16.108 This would have the advantage that the whole of the TCPA 1990, not merely most of it, would apply only in England. That would make it simpler to draft the amendments to that Act, to ensure that it continues to operate correctly – with no need to retain the interpretation sections of the Act applying to Wales. More importantly, it would enable users of the TCPA 1990 to know that the whole of it applies only in England. Users of the Planning Code would also know that it contains the whole of the primary legislation relating to planning in Wales, and not just most of it.
- 16.109 The only provision in Part 9 which does require restatement is section 231, which enables the Welsh Ministers to require an authority to acquire or develop land, as to which the *Encyclopaedia of Planning Law* comments as follows:

This is a reserve power, and likely to be rarely, if ever, used. A more direct method of ensuring that land is acquired for planning purposes might nowadays be the use of the [Welsh Ministers'] powers under section 228, provided there is some public purpose involved. Section 231 is cumbersome, in that it requires an inquiry to be held into the local authority's alleged default, in which inevitably questions as to the suitability of the land to be acquired and the necessity of acquiring it would be in issue; followed, if an order is

⁶⁰ TCPA 1990, s 226, amended by Housing and Planning Act 2016, s 99.

⁶¹ TCPA 1990, ss 229, 230(1)(a).

⁶² TCPA 1990, ss 243, 244, 244A.

⁶³ Note that the Growth and Infrastructure Act 2013 replaced section 233 with a new version in England, but not in Wales.

made against the authority, by a further inquiry in the event of objection being made to the compulsory purchase order, at which those issues would be considered again.

16.110 We agree, and do not consider that section 231 needs to be restated in the Bill.

16.111 It may also be noted that the relevant provisions are also directly applied to compulsory acquisition under the Listed Buildings Act 1990; the reference could readily be transferred to the Historic Environment (Wales) Bill

Recommendation 16-13.

We recommend that section 231 of the TCPA 1990 (power of the Welsh Ministers to require local authorities to acquire and develop land) should not be restated in the Code.

Recommendation 16-14.

We recommend the incorporation in the Bill of provisions equivalent to Part 9 (other than section 231) and sections 251, 258, and 271 to 282 of the TCPA 1990 (acquisition of land for planning purposes).

OTHER STATUTORY POWERS RELATING TO IMPROVEMENT, REGENERATION AND RENEWAL

16.112 In the light of the Law Society's comments in response to Consultation Questions 16-5 and 16-6, relating to section 89 of the 1949 Act,⁶⁴ and our **Recommendation 16-14** above as to the inclusion in the Bill of provisions relating to the acquisition of land for planning, we have concluded that we should briefly revisit the question of other statutory powers relating to improvement, regeneration and renewal.

16.113 In the Scoping Paper we provisionally proposed that the law relating to regeneration and renewal should be codified as the fourth of the five stages of codification that we envisaged at that time.⁶⁵ We also suggested the removal of some obsolete legislation. In the Consultation Paper, we suggested the inclusion within the Bill of provisions relating to those topics; and in this Chapter we have made recommendations accordingly. The provisions involved are as follows:

⁶⁴ See paras 16.47, 16.48 and 16.56 above.

⁶⁵ See para 2.19 above.

- 1) sections 215 to 219 of the TCPA 1990 (unsightly land notices) (which are within Part 8 of the Act along with the primary legislation relation to advertising and protected trees);⁶⁶
 - 2) section 89 of the 1949 Act (which deals with much the same topic area as section 215 to 219);⁶⁷
 - 3) new regulation-making powers to enable authorities to deal with fly-posting and graffiti (which links to the advertising code, and used to be in the TCPA 1990 in any event);⁶⁸
 - 4) the repeal in Wales of the provisions relating to enterprise zones, new town development corporations, urban development corporations, housing action trusts and rural development boards (which are effectively obsolete);⁶⁹ and
 - 5) the provisions enabling the acquisition of land for planning purposes (in Part 9 and sections 251, 258, and 271 to 282 of the TCPA 1990 (which would otherwise be the only remaining provisions of the TCPA 1990 in force in Wales)).⁷⁰
- 16.114 This leaves untouched the other provisions mentioned at the beginning of this Chapter – including the Local Authorities (Land) Act 1963, the Welsh Development Agency Act 1975, the Derelict Land Act 1982, the Housing Grants, Construction and Regeneration Act 1996, the Anti-Social Behaviour Act 2003, and the Localism Act 2011.⁷¹
- 16.115 There would seem to be little point in simply consolidating these provisions, since, as we observed in the Consultation Paper, they form no remotely logical statutory scheme. If there is at some point in the future the political will on the part of the Welsh Government and the National Assembly to introduce a rational scheme of legislation enabling central Government and local authorities to deal with urban renewal, it would seem to be highly desirable that it should take the form of a new statutory scheme replacing all these existing powers.
- 16.116 In accordance with the principles of codification outlined in *The Form and Accessibility of the Law Applicable in Wales*, that statutory scheme should be inserted into the Part of the Planning Code dealing with the matters that are the subject of this present Chapter.⁷² However, there would be numerous decisions to be taken as to the content of such a scheme – for example, as to what categories of land should be involved, what procedures should be used to acquire, improve and develop such land, and whether existing authorities should be empowered to take action or whether

⁶⁶ See **Recommendations 16-1 to 16-4**.

⁶⁷ See **Recommendations 16-5, 16-6**.

⁶⁸ See **Recommendation 16-7**.

⁶⁹ See **Recommendations 16-8 to 16-12**.

⁷⁰ See **Recommendations 16-13, 16-14**.

⁷¹ See **para 16.3**. There may be others.

⁷² See **para 4.52**.

new bodies should be created. The resolution of such questions would require policy input that would go beyond merely “technical reform” of the law; and is therefore beyond the scope of the present project.

16.117 We accordingly make no recommendations in that regard.