

++++++ Title: PLANNING LAW IN WALES IA No: LAWCOM0047 RPC Reference No: Lead department or agency: Law Commission Other departments or agencies: Welsh Government	Impact Assessment (IA)			
	Date: 7 Nov 2018			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Charles Mynors				
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£m	£m	£m	Not in scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

Planning law governs the way in which land is used in England and Wales. There are now around 40 Acts of Parliament or the National Assembly dealing with planning, the historic environment, and related topics. Some apply in both England and Wales, some only in England, some only in Wales. Most have been amended on many occasions. The legislation does not always reflect current practice; and there is much legislation that is in practice redundant.

As a result, planning law in Wales is unnecessarily complicated, and difficult to understand. It needs to be consolidated, clarified and simplified as far as possible.

What are the policy objectives and the intended effects?

Policy objectives:

- to bring together into one coherent code all planning law currently in use in Wales;
- to clarify and simplify legislation, incorporating where appropriate principles from established case law;
- to remove redundant provisions; and
- to make technical reforms to improve processes and procedures.

Intended effects: to increase the accessibility of planning law for all users – including practitioners, public authorities, developers and members of the public.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do nothing, leaving the law in its present unsatisfactory state.

Option 1 – Consolidate with technical reforms, allowing for the correction of errors, the removal of ambiguities and obsolete material; the streamlining of procedures; the inclusion of principles from case law; the rebalancing of primary legislation, secondary legislation and guidance;

Option 2 – Consolidate with no reform – simply restate the law, without any technical reforms.

Option 2 would deliver the first policy objective; but only Option 1 delivers all of the policy objectives.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope?		Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Consolidate with technical reforms

FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Transitional costs: Staffing to facilitate drafting new legislation, and several pieces of secondary legislation to support the Act over a 5-year period; Resources required to update guidance material and to provide Government advice; Revised educational material; Specialist training to build familiarity with new system [planners, surveyors, architects, administrators etc – most of which can be accommodated through CPD

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

No transitional benefits identified.

Other key non-monetised benefits by 'main affected groups'

On-going benefits: Consolidation significantly de-clutters the statute book and makes it easier to navigate, Increased accessibility to legal professionals, landowners, developers and other planning professionals; Less time spent in checking / understanding legislation; Less complexity in future training of professionals; Simplification assists in drafting future changes to the law; Improved operation of planning system; Planning law brought into line with current practice.

Key assumptions/sensitivities/risks

Discount rate 3.5%

Drafting assumed to occur over a five year period – dependent on where project boundaries are defined. There is the opportunity cost of focussed work here as it reduces staff availability to work on other projects. In the absence of spare capacity and / or the ability to prioritise legislative skills on this project there is the risk of higher costs as specialist skills are recruited.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 2

Description: Consolidate with no reform

FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Transitional costs: Staffing to facilitate drafting new legislation, and several pieces of secondary legislation to support the Act over a 5-year period; Resources required to update guidance material and to provide Government advice; Revised educational material; Specialist training to build familiarity with new system [planners, surveyors, architects, administrators etc – most of which can be accommodated through CPD

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

On-going benefits: consolidation significantly de-clutters the statute book and makes its easier to navigate, increasing accessibility to legal professionals, landowners, developers and other planning professionals; reduces time spent in checking / understanding legislation; reduces complexity in future training of professionals; simplifies future changes to the law.

Key assumptions/sensitivities/risks

Discount rate

3.5%

Drafting assumed to occur over a five year period – dependent on where project boundaries are defined. There is the opportunity cost of focussed work here as it reduces staff availability to work on other projects. In the absence of spare capacity and / or the ability to prioritise legislative skills on this project there is the risk of higher costs as specialist skills are recruited.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

- A. Background
- B. Problems under consideration
- C. Policy rationale and objectives
- D. The planning system: scale and scope
- E. Stakeholders
- F. Consultation responses
- G. Option description
- H. Cost benefit analysis: general points
- I. Cost benefit analysis: Option 0 (do nothing)
- J. Cost benefit analysis: Option 1 (consolidation with technical reform)
 - (1) Option 1 considered as a whole
 - (2) Consolidation, with some clarification
 - (3) Matters not to be included in legislation
 - (4) Existing law to be improved
 - (5) Obsolete and unnecessary provisions to be omitted
 - (6) Existing legislation to be adjusted to accord with current practice
 - (7) Other recommendations as to reform of primary legislation
 - (8) Reform of secondary legislation and guidance
 - (9) Transitional and saving provisions and consequential amendments
 - (10) Summary of costs and benefits arising from implementing Option 1 in full
 - (11) Partial implementation of Option 1
- K. Cost benefit analysis: Option 2 (consolidation without technical reform)
- L. Specific impact tests

Note on terminology

The law in this field extends to England and Wales. However, some applies only in England, some only in Wales, and some in both England and Wales. When we refer in this report to “repealing” a piece of legislation, we mean amending it so that in future it only applies in England; when we refer to “amending” legislation, we mean amending it so that in future it will continue to apply in its present, un-amended form only in England.

A. Background

The planning system

1. The planning system is the means by which the use and development of land is managed and controlled in the public interest.
2. Planning authorities (local councils or, where they exist, national park authorities) set out in local development plans their policies as to how land should be used and developed. Landowners and others who wish to carry out “development” – that is, building and other operations and changes in the use of land – need to obtain “planning permission” from the authority or, on appeal, from the Welsh Ministers. Where the works involve buildings of special architectural or historic interest, they may also need “listed building consent”. Where development is carried out without having been authorised, the authority may (but does not have to) take enforcement action. Special rules apply to regulate outdoor advertising, and works to protected trees and woodlands.

Planning law

3. The law in this field exists to regulate how the various procedures are operated; who may get involved; what consents are required; the policy basis on which decisions are to be made; and what happens if something goes wrong. It is thus a branch of administrative law, designed to ensure that decisions are made properly.
4. The legislation, largely dating back to 1947, has been consolidated in 1962, 1971 and 1990. The 1990 consolidation resulted in the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. The first two (the “TCPA 1990” and the “Listed Buildings Act 1990”) have been amended on many occasions since then – in particular by:
 - the Planning and Compensation Act 1991, and the Environment Act 1995 (applying identically in England and Wales);
 - the Planning and Compulsory Purchase Act (“PCPA”) 2004, the Planning Act 2008 (applying slightly differently in England and in Wales);
 - the Planning (Wales) Act 2015 and the Historic Environment (Wales) Act 2016 (applying only in Wales).
5. Other amending Acts passed by the Westminster Parliament since 2005 have applied only in England.
6. Some older Acts remain in force alongside these, generally applying in both England and Wales (in some cases slightly differently on either side of the border).
7. It is becoming increasingly difficult to discover what is the legislation currently applicable in Wales. There are in addition many pieces of secondary legislation (regulations, rules, directions and orders), and various pieces of Welsh

Government guidance. The operation of the planning system is thus simple in principle, but notoriously complex in practice.

Involvement of the Law Commission

8. As part of our 12th programme of law reform, the Law Commission was asked by the Welsh Government to examine the law and practice of development management – that is, the system by which planning authorities regulate the carrying out of development. We concluded that the development management system could benefit from a range of technical reforms, but that there was no need for further wholesale policy change in this area, particularly in the light of the reforms introduced by the Planning (Wales) Act 2015 and the Historic Environment (Wales) Act 2016.
9. However, during our review and early consultations, stakeholders shared their concerns about the complexity and inaccessibility of the law, making clear that it should be simplified and modernised as far as possible. Our project was therefore restructured to reflect a general desire for the consolidation of the relevant primary legislation, along with limited reform to bring it into line with current practice. We published in June 2016 a Scoping Paper, setting out our provisional views as to the nature and scope of a possible codification and simplification exercise.
10. We considered carefully all the responses to the Scoping Paper, and continued our research, in consultation with the Welsh Government. In November 2017, we published a substantial Consultation Paper, *Planning Law in Wales*, proposing 186 possible technical reforms. This was distributed electronically to over 500 stakeholders, with hard copies made available where requested. We also carried out an extensive programme of consultation, at meetings throughout Wales. We received written responses from around 165 stakeholders, commenting on the codification exercise as a whole, and on particular proposals.
11. We have considered carefully those responses, and points raised at consultation meetings. We have amended some of our proposals, dropped others, and introduced a few new ones. The Final Report, published in November 2018, sets out our recommendations.

B. Problems under consideration

12. Planning legislation in Wales needs simplification and consolidation for a number of interconnected reasons.

The volume of existing legislation

13. As noted above, it is becoming increasingly difficult to discover what the law currently applicable in Wales.
14. Secondary legislation has been significantly improved in recent years. The orders and regulations relating to permitted development, outdoor advertising

and protected trees¹ – originally applying both in England and Wales – now applies only in Wales; and the Use Classes Order 1987 still applies in both England and Wales. All four are likely to be replaced soon with new regulations applying only in Wales. But almost all other relevant secondary legislation applies only in Wales

15. Government policy too has now been significantly condensed and simplified – with general policy in Planning Policy Wales (PPW), updated annually; more detailed, topic-based policy in around 20 Technical Advice Notes (TANs); and procedural guidance in periodically updated Manuals produced by the Welsh Government.²
16. However, that leaves primary legislation in a very unsatisfactory state. As a result of the piecemeal process described above, the law governing planning and related matters is now to be found in around 20 statutes applying in both England and Wales (in some cases slightly differently on either side of the border), 12 applying only in England, and 8 applying only in Wales. The principal Acts (the TCPA 1990 and the Listed Buildings Act 1990) have been amended on many occasions; and there are an increasing number of Acts operating alongside them. Much of the legislation is now obsolete, but the existence of such obsolete material impedes access to what is still required. But to amend primary legislation is more difficult than to amend secondary legislation or guidance.
17. These considerations suggest that, at the very least, a major consolidation of the primary legislation relating to planning and related matters is urgently required.

Quality of the law

18. In addition to being in one place, Legislation should be consistent with and complement good practice and procedure, and provide a vehicle for the implementation of policy. And it must be clear, and easy to use. Unfortunately, Welsh planning law is not in that state. It would also be helpful for all users of planning legislation – in either England or Wales – to know with certainty which pieces of it apply on which side of the border.
19. The present exercise therefore provides a chance to achieve not just consolidation, but codification – that is, to incorporate technical reforms that improve the law, rather than merely restate it. We have identified in the Final Report a number of respects in which the legislation could be improved. The suggested changes are summarised in the following section. Some are relatively minor; some are of greater consequence.

Cost inefficiencies

20. Whilst the planning system creates value, it is frequently said to cause delays, and to impede both housebuilding and commercial activity. And one reason for that is the complexity of the underlying law – both the volume and inaccessibility

¹ TCP General Permitted Development Order 1995 (SI 418); TCP (Control of Advertisements) Regulations 1992 (SI 666); TCP (Trees) Regulations 1999 (SI 1892).

² *Development Plans Manual; Development Management Manual.*

of it generally, and the various specific problems that we have highlighted in the various recommendations in our Final Report.

21. It is difficult to quantify those problems. However, in response to our Scoping Paper, we heard some evidence as to the problems resulting from this complexity. Several planning authorities commented on delays to their work caused by the over-complicated planning system. One had been required to defend a claim in the High Court based on an action that had wrongly been taken on the basis of English legislation, not applicable in Wales.
22. The Residential Landlords Association commented on the ‘sheer volume’ of accumulated legislation, statutory instruments, European Directives along with a “myriad of case law and ministerial decisions and policy statements”. It described the amount of time, effort and cost it takes to obtain planning consent for new residential development as ‘something of a scandal’. And it noted that the legislative framework adds significantly to the cost of development, which feeds through into new house prices. RWE Generation noted that there are monetised and non-monetised costs associated with overly complicated or defective planning processes, which relate mainly to protracted project timelines (impacting on decisions to invest or procurement processes, for example).
23. We heard from one architect who had spent an afternoon researching whether a particular statute (the Housing and Planning Act 2016) applied in Wales; her research had involved contacting various Government offices and the House of Commons Library, who suggested that she contact us. We spent an hour researching the point – concluding in the end, not without some residual doubts in relation to one section, that the Act generally did not apply. That exercise will probably not be charged to a client, and is thus wholly unremunerative. There is no way of knowing how much of that kind of research takes place, nor how much time is wasted, but we suspect that it is considerable.
24. Practitioners also emphasised that, whether or not the existing chaotic state of the legislation imposed financial costs, it made the whole business of legal research difficult and dispiriting.
25. Responses to the Consultation Paper also welcomed the principle of codification – and by implication the undesirability of maintaining the existing legislation. We consider these in more detail below.

C. Policy rationale and objectives

26. This exercise has four principal objectives:
 1. To bring together into one coherent code all planning law applicable in Wales;
 2. To clarify the existing law, remove anomalies, and incorporate case law;
 3. To remove legislation that is redundant or unnecessary; and
 4. To simplify the law, and bring it into line with current practice.

27. Under the first heading, it would be desirable to bring together into one coherent code all planning law currently in use in Wales. The details of how this could best be achieved would of course be a matter for the Office of Legislative Counsel (OLC), but we consider that it is appropriate to make recommendations as to which existing statutory provisions should be included in a new Bill, and where appropriate how their structure, language or format could be improved, or the order in which they could most helpfully be presented. Further it will be necessary ensure that any reforms we are suggesting will fit in with an overall programme of consolidation.
28. Secondly, the effect of the existing law should as far as possible be clarified – where necessary by making adjustments and amendments. These may be required to remove ambiguity, to fill in gaps in the legislation, to resolve inconsistencies or correct anomalies, or to amend existing definitions or introduce new ones. It would be helpful to explore whether it is possible to incorporate into the legislation principles from established case law. And it may be appropriate to move some material from primary to secondary legislation (or from legislation to guidance) or vice versa. It would also be desirable to adjust the law so as to bring it into line with current practice.
29. Thirdly, legislation that is clearly redundant (for example, relating to events in wartime) should be removed. It would also be desirable to remove other provisions that have not been used for many years, or at all, and which seem most unlikely to be revived in practice (such as planning inquiry commissions and simplified planning zones).
30. We thus expect that a major result of this exercise should be the emergence of a consolidated text that is free from errors, ambiguities and obsolete material – as well as from various minor inconsistencies present in the existing legislation – and in modern language. And this in turn would make the legislation more accessible.
31. Under the fourth heading, it would be desirable to consider whether it would be appropriate to introduce other relatively minor reforms, at the same time as consolidating and clarifying the existing law, to further simplify and clarify the law, and to bring it into line with current practice. In some cases, these might involve an element of modest policy reform.

Intended effects

32. The effect of the various reforms we recommend in the Final Report, taken together with the consolidation of the existing legislation, should thus be to increase the accessibility of planning law for all users – including practitioners, public authorities, developers and members of the public. The result should be not only the replacement of around thirty pieces of legislation currently governing the planning system in Wales with a small number of new Acts, coherently structured, in modern language – and available for the first time in both English and Welsh – but also ensuring that the new legislation is fit-for-purpose to underpin a planning system suitable for the 21st century.

D. The planning system: scale and scope

Introduction

33. The planning system impacts on a wide range of stakeholders.
 - a. Planning applications are submitted by “developers” – ranging from individual householders to multi-national corporations – all those who own or use land or buildings. Objections to development proposals may be made by anyone.
 - b. In terms of processing applications, the key stakeholders are the planning authorities, the Welsh Government, and the Planning Inspectorate (PINS). There are currently 25 planning authorities in Wales – the 22 unitary local authorities and the three national park authorities.
34. All this activity created 558 FTE jobs in the planning service (local authorities, national park authorities and the Welsh Government) in 2016/17. And a further £945,000 was spent on planning consultancy fees.
35. The value of the planning system in Wales in that year has been estimated at £2.35bn.³ This figure is made up of a wide range of specific items. Some can be calculated with reasonably accuracy – notably the £17.1m received by planning authorities in application fees, to fund planning services (although this is not the full cost of providing those services). The contributions by developers to local infrastructure and amenities are estimated to total £122.4m. Others are more difficult to calculate precisely – such as the health benefits arising the availability of affordable housing (estimated at £0.75m) and the recreational benefits from the availability of open space (£2.47m). The largest item is the rise in land values as a result of planning permissions or public spending, estimated to amount to £2,205m over the year.
36. The rest of this section is divided into the following 4 sub-sections:
 - a. Planning policy;
 - b. Planning applications [includes number, cost and value];
 - c. Cost of the planning system; and
 - d. Cost of legal advice.
37. The figures below are from several sources: in particular, the *Value of Planning in Wales* toolkit produced for the RTPi Cymru and the Welsh Government in 2018, largely based on figures for 2016/16, the *All Wales Planning: Annual Performance Report 2016/17*, published by the Welsh Government in January 2018; and the figures regularly published by the WG on the basis of its quarterly survey of planning authorities.

³ Except as noted, the data in this section is based on information in the *Value of Planning in Wales* toolkit produced for the RTPi Cymru and the Welsh Government, and the *All Wales Planning: Annual Performance Report 2016/17*, published by the WG in January 2018

38. The data from the *Toolkit* has generally been preferred, because it provide a wider range of detailed figures. However, the Toolkit and the Quarterly Survey are both based on incomplete data, so the resulting figures should be treated with caution. But they provide at least an indication of the order of magnitude.

Planning policy

39. The basis of planning decisions is the development plan, together with any other relevant considerations. Once the Planning (Wales) Act 2015 has been fully brought into force, the development plan will consist of the local development plan, the strategic development plan, and the national development framework (NDF).

40. During the year 2016/17, development plans in Wales were used to allocate land for particular categories of new development, and also to safeguard various types of open land from development, as shown in **Table 01**:

Table 01. Land allocations in development plans in Wales

	hectares
Land allocated for new development:	
- housing	5,552
- retail and leisure	242
- other commercial (non-residential) development	3,961
- minerals (to be used over a long period)	133,324
- waste disposal	83
Land protected from development:	
- special landscape areas	50,998
- local nature reserves	9,280
- open space	8,009

41. The uplift in land value as a result of such allocations totalled around £64.6m.⁴

Planning applications

42. Planning permission is required for the carrying out of development of any consequence. “Development” is defined as the carrying out of building, engineering, mining or other operations, or the change of use of land (or buildings). Development that is within one of the classes in Schedule 2 to the TCP (General Permitted Development) Order – which predominantly relate to projects of less consequence (for example, small domestic extensions) – is permitted automatically by article 3 to the Order. More substantial development

⁴ Value of Planning in Wales toolkit.

projects will require to be authorised by a grant of planning permission, generally by the relevant planning authority but in some cases by the Welsh Ministers.

43. Every planning application will be considered by reference to all relevant policies in the current development plan for the area. They will also be assessed in the light of all other relevant considerations. These will include a wide range of site-specific matters, and in particular the impact of the proposal (if any) on the historic environment and on the use of the Welsh language. In practice, although not currently mentioned in statute, they will also include relevant policies of the Welsh Government.
44. Some development proposals generate specific requirements for improvements to be carried out (for example, to nearby road junctions); others simply contribute to the overall need for upgraded services (such as new or enlarged schools). The former will generally be dealt with by planning obligations (section 106 agreements), specific to the development in question. The latter will be provided by the system of community infrastructure levy (CIL), where it has been introduced.
45. Planning applications for major development⁵ must be the subject of pre-application discussions; other applications may be. And most applications are notified to key stakeholders (both those immediately affected and relevant specialist bodies), whose representations must be taken into account.

Number, cost and value of planning applications

46. The number of applications for planning permission in a year in Wales has been variously estimated at between 22,000 and 27,000.
47. According to the RTPI toolkit *Value of Planning in Wales*, authorities received during 2016/17 some 22,609 applications for planning permission – 583 relating to major development; 13,735 for minor development; and 8,291 others.⁶ They issued some 19,541 planning permissions (87% of applications decided), and 1,617 refusals (7%). They also engaged in 2,662 pre-application discussions. Five development consent orders were issued, in relation to larger infrastructure schemes.
48. Most of the permissions granted were for residential development, involving some 25,756 new units, of which 23.1% were “affordable”, with a total of £902.1m uplift in the value of the relevant land. Permissions also involved 258,421m² retail and leisure development, with a total land value uplift of £13.6m; and 435,059m² of commercial development, with £7.1m uplift.
49. For comparison, the four-year figures produced by the Welsh Government on the basis of the Development Management Quarterly Survey are somewhat higher –

⁵ “Major development” includes mining operations, waste disposal or processing, the provision of more than dwellinghouses or more than 1,000 sq m of new floor space, residential development on a site of more than 0.5 ha or other development on land of more than 1.0 ha (TCPA 1990, s 61Z; TCP(DMP)(W)O 2012, arts 2,2B.

⁶ “Other” applications include applications for pre-application advice; applications for the approval of matters reserved in an outline permission or by a condition of a full permission; and applications for certificates of lawfulness.

26,983 applications received (22,900 decided), including 751 major applications received (664 decided), and 15,171 minor applications received. The comparative figures are shown in **Table 02**, which also looks at the number of pre-application meetings.

Table 02. Numbers of applications in Wales

Figures are number of applications in a year throughout Wales

	RTPI toolkit, 2016/17	WG quarterly survey, 2017/18	WG survey, average 2014-18
Applications for planning permission for major development			
- Applications received	583	583	751
- Applications decided	n/a	531	664
Applications for planning permission for minor development	13,735	17,360	15,171
Other applications	8,291	8,333	8,765
All applications			
- Applications received	22,609	26,276	26,983
- Applications decided	n/a	20,863	22,900
Applications involving pre-application discussions	2,662	2,885	n/a
Proportion of applications granted	87%	90.1%	91.2%
Proportion of applications granted	7%	9.9%	8.8%

50. The RTPI toolkit indicates that in 2016/17 around £122m was contributed by developers in the form of section 106 planning obligations; and £7,714 as CIL. The former principally helped to fund educational facilities (£66m), highway improvements (£31m), affordable housing (£11m), formal open space and active travel (each £4m). The Welsh Government quarterly survey suggests significantly lower figures for contributions under planning obligations – £25m in 2016/17 – and much higher figures for CIL contributions – £692,000.
51. In the same year – in most cases as a result of permissions granted earlier – some 7,653 residential units were completed, of which 29% were “affordable”, with a total of £1,089.4m land value uplift, and yielding £9.6m in council tax. Also completed were 17,862m² retail and leisure development was completed, with a value uplift of £10.5m, creating 490 (gross) full-time equivalent (FTE) jobs, and yielding £0.6m in business rates; 338,887m² of commercial development, with £182.6m uplift in value, 6,656 FTE jobs, and £3.9m business rates; and 175MW of renewable energy, with £875,359 community benefit.

Delays

52. The current planning system imposes costs on the development sector due to the time taken for development to be approved. The period within which an application for minor development should be determined is 56 days (eight weeks); the corresponding period for a major application is 91 days (thirteen weeks) – but each can be extended with the consent of the applicant. The average performance of Welsh planning authorities during 2014/15 to 2016/17 is indicated in **Table 03** below.⁷

Table 03: Average performance of Welsh planning authorities, 2014/15 to 2016/17

	2016/17	2017/18	Average 2014/15 to 2017/18
All planning applications			
Proportion of applications determined within statutory time period	87 %	89%	81%
Average time taken to determine application	76 days	81 days	78 days
Applications for major development			
Proportion of applications determined within statutory time period	59 %	67%	46%
Average time taken to determine application	250 days	240 days	227 days

53. According to the Killian Pretty Review, planning decisions take longer in the UK than in other countries with which the UK competes internationally. It is often the developments which could do the most to boost local economies, provide much needed-homes or help tackle climate change that are subject to the greatest delays. 10% of major developments are typically delayed by a year or more. In addition, the need to obtain planning permission for sometimes very minor changes can place unnecessary barriers in the way of expansion for businesses, large and small. These barriers include extra costs and delays and can be out of all proportion to the risks of development.

Special controls

54. Where a historic building is “listed”, works that affect its special character (including demolition) will need “listed building consent” – in many cases, as well

⁷ Welsh Government Quarterly Development Management Survey

as planning permission. It has been estimated that there are around 1,400 applications for listed building consent in a typical year⁸; the true figure may be somewhat lower than that, as 797 listed building consents were granted in 2016/17.⁹

55. Demolition in a conservation area needs “conservation area consent” as well as planning permission, although planning permission is granted automatically (by the General Development Order) without the need for an application. There are between 100 and 150 applications for conservation area consent in a typical year.¹⁰
56. Carrying out such works without the appropriate consent is a criminal offence. The procedures for applying for consent are very similar to those governing applications for planning permission.
57. Special consent is also required to display an advertisement, or to carry out works to a protected tree – subject, in either case, to numerous exceptions. In a typical year, there are around 1,100 applications for advertisements consent.¹¹ There are also an unknown number of applications for works to trees protected by tree preservation orders or in conservation areas. Here too, unauthorised activity may lead to prosecution.
58. Planning authorities may intervene to secure the restoration of derelict land and buildings, or to remove flyposting and graffiti. And authorities may acquire land for the purpose of bringing about improvements.

Challenging decisions

59. Where permission or consent is refused by the authority, the developer may appeal to the Welsh Ministers, who will usually appoint an inspector (from the Planning Inspectorate, “PINS”) to re-decide the application.
60. It is possible to challenge most decisions of the Welsh Ministers and some decisions of planning authorities in the High Court.
61. In 2016/17, 416 of the 22,000 decisions made by planning authorities (on either planning permission or listed building consent) or both were the subject of appeals to the Welsh Ministers.¹² 10 went on to the courts.¹³

Unauthorised development

62. Development that is carried out without having been authorised may (but does not necessarily) lead to the issue by the planning authority of an enforcement

⁸ Figures from survey of planning authorities; Final Report, Table 13-1, and para 13.14.

⁹ RTPI toolkit. The corresponding figures from the Welsh Government quarterly survey are 750 for 2016/17, or 749 over four years 2014/15 to 2017/18.

¹⁰ Final Report, Table 13-1, and para 13.167.

¹¹ Welsh Government quarterly survey: over 2014/15 to 2017/18, average figure is 1,091 per annum.

¹² RTPI toolkit. The Welsh Government quarterly survey suggests 503 in 2016/17.

¹³ RTPI toolkit. Whether by way of judicial review or Part 12 applications (for the difference, see Final Report, Chapter 17) is not known.

notice, requiring the damage to be rectified. Such a notice may be the subject of an appeal. Failure to comply with a notice that has come into effect is a criminal offence.

63. Authorities received during 2016/17 some 6,473 complaints as to unauthorised development, leading to the issue of 138 enforcement notices, and the service of 279 planning contravention notices, 69 breach of condition notices, and 8 stop notices.¹⁴ They also issued 31 section 215 notices, to bring about the remediation of unsightly land.¹⁵

Cost of Planning System

64. We have also attempted to analyse the cost of the planning system by looking at the costs incurred by the various key players.

Cost to applicants

65. We have also sought advice from developers and consultants as to the costs incurred in submitting a planning application. Unsurprisingly, they told us that the figures vary widely. A typical straightforward application from a householder – for example, for a domestic extension, not requiring specialist input, might cost as little as £1,800 (including VAT). There are in a typical year in the region of 10,000 applications for householder development¹⁶, resulting a total cost of £18 million.
66. An application for a larger development – such as a new housing development – might cost about £1,000 per plot (including VAT) – although could cost significantly more if input were required from specialists (drainage, ecology, highways, landscaping, flood defences, and many others). As noted above, permissions were granted for 25,706 new units – which means that applications will have been submitted for around 29,200 units (since 88% of applications are successful¹⁷). On that basis, the total cost of applications for housing development would be in the region of £29 million. And other planning applications, for non-residential development, may cost in the region of £10 million.

Cost to authorities

67. As noted above, the fee income of £17.1m received by authorities is less than the full cost incurred by them in providing planning services, which indicates that the full cost of providing fee-producing services – that is, principally, determining planning applications – is greater than £17.1m
68. Of the other planning functions, administering the various special consent regimes (relating to listed buildings, advertisements and protected trees) cost

¹⁴ RTPI Toolkit. The Welsh Government quarterly survey records 5,978 enforcement complaints in 2016/17, and an average of 6,145 per annum over 2014/15 to 2017/18.

¹⁵ RTPI Toolkit. See Chapter 12 of the Consultation Paper for an explanation of each of these types of notice.

¹⁶ RTPI Toolkit. The Welsh Government quarterly survey records 8,723 householder applications in 2016/17, and an average of 8,604 per annum over 2014/15 to 2017/18.

¹⁷ Welsh Government quarterly development management survey, average figures over 2014/15 to 2017/18.

around £5 million in 2016/17 – although the figures are difficult to estimate with any precision, as the officers involved are usually employed within mainstream planning departments. The enforcement of planning control cost £5 million per annum – which is significant, as the operation of the enforcement system typically involves significantly more law-related work than other types of planning activity, and is therefore likely to be affected by changes in legislation more than them.

69. The appeals system in Wales is administered by the Planning Inspectorate, which is deals with both England and Wales; of the 261 inspectors employed, 19 (7.2%) deal with Welsh cases.¹⁸ Of the £33.5 million staff cost of operating the Inspectorate in 2016/17, therefore, in the region of £2.4 million might be related to Welsh casework.
70. Finally, there will be costs borne by third parties involved in the planning system – such as amenity groups and other consultees. These are impossible to quantify.
71. The figures in the previous paragraphs can be summarised as in **Table 04**:

Table 04. The estimated cost of the planning system

<i>(all figures approximate)</i>	£ million	
Costs borne by applicants:		
- householder applications	18	
- larger applications (residential)	29	
- non-residential development	10	57
Costs borne by planning authorities:		
- determining planning applications	17	
- determining other applications (LBC etc)	5	
- enforcement	5	27
Costs borne by Planning Inspectorate (Wales)		2.5
Costs borne by third parties		Unknown

Cost of legal advice

72. As to the proportion of this cost that is directly attributable to legal advice and research, this too is difficult to estimate. One planning authority told us that legal advice is done in-house and therefore not explicitly costed, but it is still ‘likely to be significant over the financial year’; we consider that this is likely to be the case with a number of authorities.
73. One authority told us that its total legal spend on the development management service (essentially, processing planning applications) was about £129k in 2015/16 and £122k in 2016/17. This authority is responsible for an average-sized

¹⁸ *Planning Inspectorate Annual Report and Accounts 2017/18*

area, which suggests that a typical figure for an authority's annual spend would be around £125,000. There are 25 planning authorities in Wales, which suggests a total figure of about £3.13 million.

74. Similar considerations would apply to the determination of how much expenditure by developers and third parties is directly attributable to legal advice and research. It is difficult if not impossible to separate out the costs directly or indirectly attributable to legislation from the general costs of dealing with planning applications and appeals, or the costs of legal advice. There will of course still be a need for a advice, following the implementation of our recommended reforms, even if it will be slightly reduced.

E. Consultation responses

75. As noted above, the planning system impacts on a wide range of stakeholders. In the course of our consultation exercises on the Scoping Paper and the Consultation Paper, we have been in touch with over 500 individuals and groups, and have heard from or met with around a third of them. The number of responses received – over 160 – was high for a technical exercise of this type.
76. The proposed codification exercise as a whole received widespread support, from a wide variety of stakeholders. This indicates that the existing system is perceived to be substandard.
77. We have received a range of views from housebuilders, other housing bodies, landowners and other developers as well as from those acting on behalf. We did not hear from many householders, but a number of those from whom we did hear will be very familiar with their views, and will have reflected them to some extent. And we did take part in a seminar with Planning Aid Wales, who represent those unable to afford professionals.
78. Landowners were generally enthusiastic. National Grid commented that “the proposed rationalisation of the planning system within Wales will, we believe, have the long-term effect of simplifying the operation of planning policy and development control in Wales. This is a useful change to offset some of the additional costs that may come from an increasingly divergent planning system in England and Wales”. Tidal Lagoon Power, a developer associated with large energy projects, noted that: “we recognise your description of a complex picture of ‘planning system’ legislation in Wales. From a developer’s perspective, the additional cost with dealing with complex and duplicating processes, and the risk associated with uncertainty or duplication are both elements that impact on the prospect of attracting investment into Wales”. And Redrow Homes supported “the principle of a new Planning Code to consolidate existing planning legislation, [including] the removal of legislation that has never been used or not been applicable for many years”.
79. Planning authorities play a crucial role on ensuring that the planning system works efficiently and effectively. We have met with chief planning officers from almost all of the 25 authorities, in extended meetings organised by the Planning

Officers' Society for Wales (POSW), and we have subsequently heard from most of them. We have also heard from local authority representative bodies. We have had a number of meetings with officials from the Welsh Government, including Cadw.

80. Newport City Council noted that “there is masses of legislation relevant to Wales and it would be helpful for there to be a consolidated Code”. One community council described the exercise as being “very sensible and ... very helpful to the lay person.”; another appreciated “the overarching importance of tidying up and bringing together existing planning law.”
81. Another authority noted, in response to the Scoping Paper, that unclear legislation can lead to mistakes being made that can lead to court challenges which can be time-intensive and costly. It gave an example of a where a decision it had made was overturned in court as it had been based on legislation applying in England but not in Wales.
82. And we have had particularly helpful comments from the Planning Inspectorate (PINS). PINS noted that we have set out “many worthwhile and reasonable improvements”. Planning authorities generally supported codification in principle.
83. We also received responses from a range of professional bodies (representing barristers, solicitors, architects, planners, surveyors, engineers, conservation professionals, archaeologists, ecologists and others), and from individual professionals and other individual respondents. The Courts and the judiciary did not respond directly, but their views will be reflected in those of the professionals appearing before them.
84. The codification exercise was thus supported by the relevant professional bodies – including the Royal Town Planning Institute (the RTPI), the Chartered Institute of Building (CIOB), the UK Environmental Law Association (UKELA), the Law Society and the Bar Council.
85. Professional firms took a similar view. Arup, an independent firm of designers, planners, engineers and consultants, stated that “rationalising the excessive amount of planning legislation in Wales is a significant step towards streamlining the existing planning system and will ultimately benefit all stakeholders involved.” Douglas Hughes Architects Ltd “broadly welcome simplification of primary legislation related to land use and development and believe that by doing so it will save unnecessary time, work and expense both for our clients and ourselves. From the simplest of house extensions to complicated developments on brownfield sites, obtaining planning permission is often fraught with complication and difficulty. Simplifying the planning process and providing our clients with more certainty would therefore be most beneficial and welcome”.
86. And a number of individual stakeholders – particularly planning consultants, architects and others working regularly with the planning system, commented on the difference that codification would make to their work.
87. We also heard from a number of third-sector organisations that are involved in the planning process (including national and local heritage bodies, faith groups,

tree-related organisations, and others) – not least in relation to our proposals as to the control of works affecting the historic environment, trees and woodlands. And we have met with some of these bodies. And we have received representations from 21 community and town councils, and from a range of other public bodies (including the Public Services Ombudsman and the Welsh Language Commissioner).

88. Finally, the Welsh Language Commissioner noted that “such a move would also provide an opportunity to ensure that a large piece of legislation which affects Wales is available through the medium of Welsh”.
89. This makes it clear that there will indeed be very real benefits arising from our recommended reforms. However, they are difficult if not impossible to quantify. We consider this below.¹⁹
90. Further details of the consultation exercise we carried out, both in relation to the Scoping Paper and in relation to the Consultation Paper – and the responses we received – are contained in the Final Report.

F. Option descriptions

91. In this assessment, we have considered two options for legislative change
 - Option 1 – Consolidate with technical reform; and
 - Option 2 – Consolidate with no reform.
92. We have compared both of these against Option 0 – the do-nothing option.

Option 0 – Do nothing

93. This option retains the existing system. Experience over the last 70 years suggests the existing legislation will continue to be amended from time to time. It is therefore likely to become increasingly complex, so that all the existing problems, outlined above and in more detail in the Final Report, will not only continue but will become gradually worse. It will become gradually more and more difficult, and therefore more expensive, to provide adequate training. And it will become increasingly difficult to continue to update satisfactorily loose-leaf and online resources as the scale and complexity of the law both increase.
94. It will also become increasingly difficult for the courts and inquiries to navigate the existing legislation – and correspondingly more difficult, and therefore expensive, for advocates to present cases in such a way as to assist courts, and for advisers to advise clients with certainty.
95. And it will become increasingly problematic for Parliament and the National Assembly to amend the law. The drafters of the Planning and Compensation Act 1991 commented that it would have been almost impossible if the 1990

¹⁹ See paragraphs 129 to 144 below.

consolidation of planning legislation had not just taken place. And that problem will become worse.

96. It may be noted that the TCPA 1947, the first modern planning statute, extended to 120 sections and 11 schedules; the current planning statutes contain 595 sections and 35 schedules.²⁰ If the legislation had not been consolidated on several occasions since 1947, the 1947 Act would now be completely unusable. Whilst, therefore, it would be possible to continue with the present legislation as it is, that will not be possible for ever – the question is not whether it will need to be consolidated (with or without technical reform), but when.
97. Option 0 would therefore not meet our policy objectives, in that it would leave in place a mass of legislation that is widely dispersed, unclear in places, contains much material that is never used, and in a number of ways fails to accord with current practice.
98. Stakeholders have expressed their dissatisfaction with the existing state of affairs. As we note below, many have expressed enthusiasm for our proposals (Option 1). A few have drawn attention to specific problems with some of our recommendations. But none has expressed any support for mainlining the status quo.

Option 1 – Consolidation with technical reform

99. Option 1 consists of two elements:
 - the consolidation of all existing planning legislation into a single, logically structured piece of legislation; and
 - the inclusion of various technical reforms, designed to improve the legislation.
100. We expect that the result of the present exercise will be the emergence of a new statute, the Planning (Wales) Bill. In other words, the first element of Option 1 is a traditional consolidation exercise, bringing together in one place all of the primary legislation relating to planning and associated topics, as it applies in Wales. Taken on its own, that would lead to a major improvement, comparable in scope to the exercise that led to the 1990 consolidation of planning legislation.
101. That would meet in part the first policy objective identified at **paragraph 26** above – but would not on its own lead to the legislation becoming clearer. Nor would it meet the other three objectives.
102. In this Option, we therefore recommend a number of technical reforms, to be introduced alongside mere consolidation. In the following paragraphs we highlight the most significant ones; fuller details are available in the Consultation Paper and the Final Report. To save a great deal of repetition, we have grouped the recommendations under the following headings, reflecting the categories of reforms that seem likely to have similar costs and benefits:

²⁰ Consultation Paper, para 1.47.

- existing legislation to be restated, with some minor clarifications;
- matters not to be included in legislation;
- existing law to be improved;
- obsolete and unnecessary provisions to be omitted;
- existing legislation to be adjusted to accord with current practice;
- other recommendations as to reform of primary legislation; and
- reforms to be made to secondary legislation and guidance.

We emphasise that these categories are not intended to have any other significance

103. We have summarised and considered below the principal recommendations in relation to each of these headings, and their likely costs and benefits.²¹ Reference should be made to the Consultation Paper and the Final Report for fuller details of the background to each individual provisional proposal and recommendation.
104. As an alternative to implementing all of the possible technical reforms identified in our Final Report, it would be possible to implement some but not all of them. We consider this briefly.²²

Option 2 – Consolidation without technical reform

105. As an alternative to Option 1 – consolidation with technical reform – it would be possible to carry out a traditional consolidation exercise with no additional reform. Option 2 therefore involves merely a restatement of the existing law in a single Act, with all of its existing shortcomings and drawbacks. It would in particular include all of the statutes listed at **paragraph 146** below. It would also include some or all of the recommendations referred to under sub-heading (2) (existing legislation to be restated)²³, and possibly some or all of those listed under sub-heading (4) (existing law to be improved).²⁴
106. But it would not include the various reforms referred to under headings (5) to (8)²⁵– and in particular it would result in the retention of the obsolete and unnecessary provisions that are proposed to be repealed under Option 1.

G. Cost benefit analysis: general points

107. This impact assessment identifies both monetised and non-monetised impacts of intervention, with the aim of understanding the overall impact on society and the

²¹ See **paragraphs 118 to 338** below

²² See **paragraphs 339, 340** below.

²³ See **paragraphs 145 to 156** below.

²⁴ See at **paragraphs 160 to 167** below.

²⁵ See in **paragraphs 168 to 338** below.

wider environment. The costs and benefits of Options 1 and 2 are measured against the “do nothing” option (Option 0).

108. The impact assessment process requires that we make an assessment of the quantifiable costs and benefits even when there is insufficient material on which to base those calculations. We also invited those responding to the Scoping Paper to provide estimates of the cost of perceived defects with the present system, and of the benefits of consolidating and simplifying the legislation. And wherever possible we have spoken to stakeholders – planning authorities, solicitors, planning consultants and others – to inform our view of the likely impact of our recommendations, and have used this as the basis for our calculations.
109. Where it has not been possible to obtain a rough indication of numbers in this way, we have had to make what we hope is a realistic estimate. In such cases, we have taken a conservative approach and have tended to use figures that we consider likely to under-estimate benefits and over-estimate costs. We have also been assisted by information contained in the *Value of Planning in Wales* toolkit produced for the RTPI Cymru and the Welsh Government,
110. When calculating the Net Present Values (NPVs) for the impact assessment, we have used a time frame of ten years, taking the current year 2018 as Year 0. We have assumed that the transitional costs occur in Year 0, and ongoing costs and benefits accrue in Years 1 to 10 following the coming into force of the new Bill. A discount rate of 3.5% has been used in all cases, in accordance with Treasury guidance. Unless stated, all figures are in 2018 prices, and have been up-rated using the GDP deflator.
111. A Bill is in the process of being drafted by the Office of Legislative Counsel (OLC), in conjunction with the Legal Services and Planning Departments of the Welsh Government, and the Law Commission. That is thus already an absorbed cost. We have assumed that the involvement of the OLC in the ongoing process of incorporating reforms would be identical to their current involvement the Bill; and that the same would be true of the involvement of the Legal Services and the Planning Departments, although the degree of their involvement is unquantifiable with any certainty. For the purpose of this exercise, we have excluded any input from the Law Commission into this exercise.

H. Cost benefit analysis: Option 0 (do nothing)

112. Option 0 – “do nothing; retain the existing position” – is the base case against which our other options are measured. Because the “do nothing” option is compared against itself, its costs and benefits are, of course, zero, as is its NPV.

Costs

113. There would initially be no costs associated with “implementing” this option – as no “implementation” would be required.
114. In particular, there would be no drafting costs, nor costs associated with getting legislation through the National Assembly, nor training costs. Existing training

courses – both for established practitioners and new entrants – would continue. And existing textbooks and online and loose-leaf resources would continue to be updated.

115. While there would not be any additional costs, therefore, current costs would continue to be incurred. However, whilst those who have worked within the planning system for many years may be familiar with the system, and the legislation underpinning it, the comments we have received expressing support for the principle of consolidation (with or without reform) – referred to above²⁶ – make it abundantly clear that not all practitioners are happy with the existing legislation; and indeed most are very unhappy with it. And those seeking to comprehend the scheme of planning legislation – those entering the relevant professions for the first time, those encountering a planning problem for the first time (or possibly after a period away from it), and members of the public and their advisers will find it much more difficult.
116. As the legislation inevitably becomes ever more complex, the difficulty of becoming familiar with it will gradually but inexorably increase, both for established practitioners and for newcomers. There will therefore be an increasing cost over time, both of operating the existing legislation and of training those who need to be familiar with it.

Benefits

117. The do-nothing option would retain a system with which experienced stakeholders, and in particular planning authority officers, are familiar. But over time that benefit will gradually diminish, to be replaced by the increasing cost identified in the previous paragraph.

I. Cost benefit analysis: Option 1 (consolidation with technical reform)

(1) Option 1 considered as a whole

118. First, we note the transitional costs and ongoing benefits of implementing Option 1 as a whole.

Transitional costs: drafting

119. The production of a new statute of the size envisaged is clearly a major undertaking. It requires continuous input from policy and legal staff within the Welsh Government Planning Division, over a period of around five years. There has been and will continue to be input from the Law Commission – a team lawyer over five years, and a research assistant over three years, each working full time. And the final drafting will involve one or more draftsmen within the Office of Legislative Counsel, working full time for up to four years.

²⁶ See paragraphs 75 to 90 above.

120. In addition, the passing of the Act will need to be followed by the making of a number of pieces of secondary legislation, which is likely to involve a similar input of time, on an ongoing basis over several years.

Transitional costs: updated guidance material and training

121. All law reform leads to a revised or entirely new system, which will be unfamiliar to users of the existing system. There will therefore be a need to update Government advice, educational material (books, online resources, training manuals and so forth), and explanatory material (leaflets and websites).

122. However, such material is updated from time to time in any event, as the law and policy develops for a variety of reasons, and as stocks of paper documents run out. Provided sufficient time is given, therefore, to enable producers to make appropriate arrangements in advance, the additional costs of updating material will not be great.

123. There will be a need for specialist training to be provided to relevant professionals – including planners, surveyors, architects, and administrators, as well as specialist barristers and solicitors – to familiarise them with the new system. However, such training is provided regularly anyway, in response to the widespread requirement for continuing professional development – so again the additional cost will not be great. In addition, the proposed changes will be partly consolidation, which does not change the substance of the law, but merely its presentation – and particularly technical reforms that are each relatively modest. The extent of the training required would therefore be modest.

124. We have sought information from practitioners as to the likely transitional costs. They confirmed that there is always a need for updated guidance and educational material, so that the additional impact of any new legislation, of the kind being proposed in this project, would be real, but modest and impossible to quantify. Similarly, in each of the relevant professions, there is at all times an ongoing programme of training – both for experienced practitioners and for those starting out for the first time – so that the additional impact is, again, real but modest and impossible to quantify.

125. Overall, therefore, we conclude that there will be modest but unquantifiable transitional costs of implementing Option 1, taken as a whole.

126. Clearly if only some of our recommended reforms were to be implemented, the changes would be less, and the transitional costs correspondingly less. But we do not consider that there would be a significant reduction in those costs if, say, a handful of the 193 proposed reforms were to be omitted.

Ongoing costs

127. These are considered below, in relation to the various categories of recommended reforms.

Transitional benefits

128. None have been identified

On-going benefits

129. Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms. However, there are significant benefits of our proposed reforms, even though they are generally impossible to quantify sensibly in monetary terms.
130. The principal benefit, difficult to quantify but very real in practice, is that a single, coherently structured statute, drafted in line with modern drafting conventions, will be easier for users to navigate, without recourse to expensive advice.
131. It will also be much easier to be co-drafted in English and Welsh, which will assist those whose first language is Welsh.
132. Consolidation would significantly de-clutter the statute book. There will be significant benefits for users in the creation of a single code that is easier to navigate, and contains in one place all the relevant primary legislation – in place of the present plethora of different Acts, in many cases amended on many occasions. The repeal of obsolete or unused provisions will also enable easier access to those provisions that are still in use. And the other minor refinements noted below will all make life easier for users of the legislation – as agreed by respondents to the Consultation Paper.
133. Simpler legislation enables planning authorities and inspectors to focus less on the minutiae of the law and more on the core business of determining applications and appeals. It will also be easier for landowners, developers and other professionals (architects, surveyors, landscapers, tree consultants, traffic engineers and many others) to navigate, especially for those who encounter it only occasionally.
134. Stakeholders have told us that the consolidation and simplification of planning legislation would lead to greater clarity, which in turn make the planning system more accessible, increasing public engagement. In response to the Scoping Paper, one planning authority said that the simplification of planning legislation would make it more user friendly to both the legal and non-legal professional. Another said that the major benefit of a consolidation and simplification of planning would be a system that benefits everyone: from the perspective of the public (including householders), the law in relation to planning should be more understandable and easier to access, which would mean that they public will be able to engage better with it.
135. Consultees also thought that consolidation and simplification would reduce the time spent – by authorities, developers, third parties and their advisers – in checking and understanding legislation, and would reduce the risk of missing important points, such as in relation to whether laws are in force at all or apply to Wales. As a result, time (and hence money) would be saved by not needing to seek legal advice. The Residential Landlords Association, for example, noted that the present unsatisfactory legislative framework adds significantly to the cost of development, which feeds through into new house prices.

136. We have noted above that there are currently significant delays imposed by the operation of the planning system.²⁷ Society as a whole may be taken to have accepted that the benefits arising from the existence of a planning system outweigh the costs, including those due to development being delayed. However, it is clearly desirable for such delays to be minimised as far as possible. We consider that the complexity of the legislation is by no means the only or principal cause of delay; but its consolidation and simplification would still make a significant contribution to speeding up the system.
137. A simpler system would also make it more straightforward to train future planning officers, and other relevant professionals.
138. The resulting benefits would thus include:
- improvements in the ability of users to access and interpret the law;
 - efficiency gains in terms of time savings to local authorities, businesses and individuals;
 - reduced professional costs (legal and consultancy fees) incurred by applicants;
 - fewer enquiries from prospective applicants to planning authorities for clarification of the law;
 - facilitating community participation in the planning process by making the law more accessible;
 - wider benefits to the economy and society if the approval of development is more straightforward, and therefore faster; and
 - greater respect for the rule of law, and for an important branch of the law.

Quantification

139. As noted, benefits of this kind are not capable of being precisely quantified or monetised.
140. However, by way of illustrative example, given the estimated cost of planning applications to applicants of £57 million²⁸ if a simplified planning code would reduce that budget by 1%, that would lead to a financial benefit of at least £570,000 per annum. If this saving is quantified over a 10-year period, with a discount rate of 3½%, that would amount to a present value (PV) of £4.74 million.
141. Additionally, given the estimated annual cost to authorities of £29.5 million, a 1% reduction in budgeted expenditure from a simplified system would yield £295,000 per annum and a PV of £2.45 million over 10 years. And third-party stakeholders (amenity groups, neighbours, etc) would also benefit – albeit to an extent that it unquantifiable.

²⁷ See **paragraphs 52, 53** above.

²⁸ See **Table 04** above.

142. The practitioners with whom we discussed the issue of quantifying possible benefits made it abundantly clear that they consider that a programme of reform of the kind we were suggesting – both consolidation and simplification – would have very real benefits. But they also stressed that it would be almost meaningless to attempt to quantify those benefits, either in monetary terms or otherwise.
143. To illustrate the point, one drew attention to the *Encyclopaedia of Planning Law*, a ten-volume loose-leaf work that contains the text of all primary and secondary legislation and Government guidance, along with some commentary. If the result of these reforms were to reduce the *Encyclopaedia* so that there only three volumes applicable in Wales (as opposed to nine volumes in England), that would be a major step forward, and would make legal research less of a difficult and dispiriting process. But it would still take time for all but the most experienced practitioners, and lay people would still find the remaining three volumes intimidating.
144. We now turn to the specific elements of the reforms that form part of Option 1.

(2) Restatement of existing legislation, with some clarification

145. As noted above, the first element of Option 1 is the consolidation of all existing planning legislation into a single, logically structured piece of legislation, bringing together in one place all of the primary legislation relating to planning and associated topics as it applies in Wales.
146. That would include, in particular,
- all or at least most of the TCPA 1990, as it applies in Wales, and as it stands following amendments by numerous subsequent Acts;
 - the PCPA 2004, as it applies in Wales, following amendments by subsequent Acts; and
 - the Planning (Wales) Act 2015; and
 - parts of around a dozen other statutes.²⁹
147. In our Final Report we have made a number of recommendations as to what should be included in such a Bill, and as to the structure and format of some provisions within it.
148. We have also noted that that the Welsh Government may be bringing forward at around the same time a Historic Environment (Wales) Bill – which would be a straightforward consolidation measure, not involving technical reform. It thus does not form part of this project, but needs to be taken into account.
149. The Planning (Wales) Bill and the Historic Environment (Wales) Bill would together replace:

²⁹ Listed in Tables B-2 to B-4 in Appendix B to the Consultation Paper.

- all or part of eight statutes – the Planning (Wales) Act 2015, the Historic Environment (Wales) Act 2016, and parts of six others³⁰ – that apply only in Wales; and
 - all or part of 27 statutes – including the TCPA 1990, the Listed Buildings Act 1990, six others, and parts of another nineteen³¹ – that currently apply both in England and in Wales.³²
150. The most straightforward group of reforms are thus those where we have recommended the restatement of the existing legislation, with some changes of structure, language or format considered appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice.
151. For example, we have explicitly recommended that certain groups of statutory provisions are included in the new Bill – those relating to the formulation of development plans; blight notices; power to decline similar applications; planning applications in the area of underperforming authorities; developments of national significance; CIL; planning obligations; compulsory acquisition of land for planning purposes; and post-1982 minerals development.³³ And there are many other parts of existing planning legislation whose retention we implicitly recommend.
152. In some cases we have recommended that the wording of the legislation be amended to accord with current practice – for example, “persons appointed by the Secretary of State” should be referred to as “inspectors”, and “local planning authorities” simply as “planning authorities”.³⁴ In other cases, we have recommended changes to simplify the legislation, without changing its substance – for example, by clarifying the circumstances in which a section 215 notice can be served, and the appeals that can be decided by inspectors; by relocating the provisions as to certificates of lawfulness, by including in the Bill provisions in the Public Health Acts currently only referred to, and by bringing together provisions currently dispersed unhelpfully.³⁵ We have also highlighted definitions that could be tightened up with advantage (“advertisements”, “mining operations”, “agriculture”, and related terms).³⁶
153. All of these recommendations will clarify the law, but not alter its substance.³⁷

³⁰ Listed in the Consultation Paper at Table B-2.

³¹ Listed in the Consultation Paper at Tables B-3 and B-4.

³² There would also have to be a Consequential Provisions Bill to make necessary amendments to other legislation, and to ensure that the existing legislation continues to operate satisfactorily (at least as far as it does at present) in England.

³³ See Recommendations 6-1, 6-5, 8-5, 9-1, 9-4, 10-1, 10-2, 16-13, 18-7.

³⁴ See Recommendations 5-11, 5-13.

³⁵ See Recommendations 16-1 (part), 11-2; 7-11, 18-13, 12-1, 18-10.

³⁶ See Recommendations 14-2, 18-5, 18-17

³⁷ Others in the same category are Recommendations are 7-6, 8-4, 8-15, 8-17, 18-1, and 18-8.

Costs and benefits

154. The reforms itemised under this heading will give rise to the transitional costs noted above – in particular, drafting and associated costs.³⁸ However, they will not lead to ongoing costs. By definition, consolidation does not alter the law at all, it merely restates it in an easier-to-find format. There can therefore be no changes to procedures arising from such an exercise, and thus no additional ongoing costs to any of the stakeholder groups.
155. In particular, the minor recommended changes noted in **paragraph 153** will have no costs implications – for example, renaming “persons appointed by the Secretary of State” as “inspectors” should make the system slightly easier to understand for the uninitiated, but will not result in any extra costs.
156. Taken on its own, that would lead to a major improvement, comparable in scope to the exercise that led to the 1990 consolidation of planning legislation. The benefit of the reforms under this heading will therefore be almost entirely included within the general benefits noted above.³⁹

(3) Matters not to be included in legislation

157. Related to the reforms under the previous heading, we have made recommendations in the Consultation Paper as to a number of matters that might seem to be suitable for inclusion in the Bill, but which we considered should not be included in either primary or secondary legislation. These included a statutory provision as to the purpose of planning; the definitions of “material consideration”, “tree” and “woodland”; and the merging of scheduled monument consent with planning permission.⁴⁰ These have been carried forward into the Final Report.

Costs and benefits

158. These recommendations will also have no cost implications – they are all matters that are currently outside primary legislation, which we are recommending should remain outside legislation.
159. And they will not in themselves give rise to any specific or general benefits.

(4) Existing law to be improved

160. Secondly, we have made several recommendations as to possible minor improvements to the legislation, in addition to simple restatement.
161. We have thus proposed the removal of potential ambiguities – as to pre-application procedures for DNS applications, commencement conditions,

³⁸ See **paragraphs 119 to 126** above.

³⁹ See **paragraphs 129 to 144** above.

⁴⁰ See Recommendations 5-10; 5-2, 15-1; 13-9. Other similar recommendations include 11-7, 12-3, 15-5, 18-6, 18-14.

conditions requiring development to be discontinued, and purchase notices.⁴¹ In each case we sought to clarify the legislation so that it accords with what seems to be the intended effect.

162. We have proposed that the distinction between conditions and limitations be removed; that the power to issue split decisions be made explicit; that the mental element in offences relating to protected trees be clarified; and that the powers to serve section 215 notices be clarified in respect of problems caused by historic land uses.⁴² And we recommend the removal of a minor inconsistency as to the procedure for notifying certain applications to the Welsh Ministers.⁴³
163. We have also recommended that amendments are made to fill in certain gaps in the legislation that currently exist – notably by introducing new definitions of some terms (for example, “dwelling” and “mining operations”), clarifying some existing definitions (including “listed building” and “advertisement”) and removing other terms altogether (such as “site [of advertisement]”, to be replaced by “land on or at which an advertisement is displayed”).⁴⁴ We have recommended that an explicit provision is introduced enabling use class regulations to be approved by the Assembly; and that the long-established test for costs awards is made statutory.⁴⁵
164. We have made recommendations as to incorporating the effect of existing case law into the statutory code, in relation to considerations to be taken into account in making planning decisions; conditions; reasons for decisions; enforcement notices; the control of advertisements; and the extent of “curtilage”.⁴⁶
165. Finally, under this heading, we have made several recommendations as to moving provisions from primary to secondary legislation or vice versa; avoiding duplication or inconsistency as between primary and secondary legislation; and clarifying the enabling powers to make secondary legislation.⁴⁷

Costs and benefits

166. The reforms noted in under this heading will improve the law – making it easier for users, removing ambiguity and loopholes in the existing legislation, and clarifying it generally – but will not introduce new costs. The same will be true of amending existing definitions and introducing new ones, and incorporating case law into the statutory code. Moving provisions from primary to secondary legislation and vice versa will also make no difference to costs.

⁴¹ See Recommendations 9-2, 8-14, 8-16, 11-5, 11-6.

⁴² See Recommendations 8-9, 8-30, 15-14, 16-2.

⁴³ See Recommendation 8-26.

⁴⁴ See Recommendations 18-15, 13-10, 14-1, and 14-3.

⁴⁵ See Recommendations 7-4, 18-12.

⁴⁶ See Recommendations 5-2, 5-3; 8-10; 8-31; 12-10; 14-14; 18-16.

⁴⁷ See Recommendations 6-2, 7-1, 7-2, 7-5, 10-3; 12-14, 14-4; 14-6.

167. The benefit of these recommended reforms will be almost entirely the general (unquantifiable) benefits noted above.⁴⁸ So, for example, if a provision is to be found in primary or secondary legislation – wherever seems most appropriate – that will make it easier for users of the legislation to find it, but will lead to n specific costs or benefits.

(5) Obsolete and unnecessary provisions to be omitted

168. Thirdly, we make several recommendations as to legislative provisions that need not be restated in the Bill, because they are obsolete, spent, or no longer of practical utility or effect. These include provisions relating to the original introduction of planning legislation in the 1940s,⁴⁹ and provisions that are duplicated elsewhere within the legislation – for example, section 2 of the Planning (Wales) Act 2015 and section 3 of the Coal Industry Act 1994, and sections 249 and 250 of the TCPA 1990.⁵⁰

169. We have also recommended the repeal of a number of provisions in the legislation governing planning and related matters that enable the designation of certain types of area, or the creation of certain special procedures, which have not been used for many decades (or, in some cases, have never been used at all). The special types of areas include the following – listed in the order of their first appearance – new towns; rural development boards; areas of archaeological importance; enterprise zones and urban development corporations; simplified planning zones and experimental areas in relation to the control of advertising; and housing action trusts.

170. We have observed that these have hardly been used at all (and in most cases not at all in Wales), and concluded that, if the Welsh Ministers were at some point in the future to introduce a new policy initiative of a similar character, they would be likely to do so in the context of new legislation, rather than reviving one of these old schemes. We have accordingly recommended that in each the relevant legislation can be repealed.⁵¹

171. The special procedures include enforcement notices and special committees and tribunals relating to advertising; and planning inquiry commissions. These have never been used in either England or Wales, and are extremely unlikely to be – and nor has provision enabling the Secretary of State or the Welsh Ministers to provide that planning permission can operate as consent under another regime. Again, we have recommended that the relevant legislation in each case can be repealed.⁵²

⁴⁸ See **paragraphs 129 to 144** above.

⁴⁹ See Recommendations 7-8, 12-26.

⁵⁰ See Recommendations 5-7, 5-9, 11-8. For other redundant provisions are the subject of recommendations 6-4, 7-7, 8-29, 18-3, 18-4 and 18-18.

⁵¹ See Recommendations 5-12, 7-9, 7-10, 13-11, 14-16, and 16-8 to 16-12.

⁵² See Recommendations 8-29, 9-5, 14-11 and 14-15.

172. We have recommended the removal of the provisions relating to “deemed planning applications” associated with ground (a) enforcement appeals, which add nothing.⁵³
173. We have recommended the repeal of the provisions allowing compensation to be paid for the cost of removing advertisements on sites used for advertising in 1948, which are in practice obsolete.⁵⁴
174. We have proposed the repeal of the special statutory code in Part 12 of the TCPA 1990, relating to appeals in the High Court against planning decisions, as it is now exactly duplicated by the judicial review provisions in Part 54 of the Civil Procedure Rules.⁵⁵

Costs and benefits

175. The removal of obsolete and unnecessary provisions will have no costs implications, as the provisions in question are not used at present, and have not been used for many years (or, in some cases, at all).
176. However, the removal of the obsolete or unnecessary provisions noted above will be a significant component in the general benefits noted above.⁵⁶ Several stakeholders used the analogy of clearing out unused items from a domestic attic – it takes time and effort, and yields no direct financial or other benefit, but significantly improves the well-being of all in the house, and makes easier any subsequent activity.

(6) Existing legislation to be adjusted to accord with current practice

177. Fourthly, as well as these relatively minor technical reforms, we have noted a few other places where the law could usefully be amended, rather than simply clarified, to bring it into line with current practice.
178. For example, the duties that currently underpin the making of decisions under the planning Acts – relating to the development plan, the historic environment, the Welsh language and government policies – are applied inconsistently, and do not accord with current practice; we have recommended that the relevant statutory provisions be amended accordingly so as to form a consistent statutory code.⁵⁷
179. We propose the repeal of the provisions that prevent planning authorities ever dealing with non-compliant applications or allowing twin-tracking, as each may be appropriate in certain cases.⁵⁸ We recommend the clarification of the law as

⁵³ See Recommendation 12-12.

⁵⁴ See Recommendation 14-17.

⁵⁵ See Recommendations 17-1, 12-5.

⁵⁶ See **paragraphs 129 to 138** above.

⁵⁷ See Recommendations 5-1, 5-4, 5-5, 5-6.

⁵⁸ See Recommendations 8-2, 8-6.

to the approval of details.⁵⁹ And the procedure for the variation of details approved under a condition should be improved.⁶⁰

180. We have also recommended that the rules as to works to protected trees be adjusted to accord with current practice in relation to replanting requirements.⁶¹

Costs and benefits

181. These changes too would have no costs implications, as the resulting procedures are in practice already in place.
182. And, here too, the resulting benefit of such changes would be almost entirely part of the general benefits noted above.⁶²

(7) Other recommendations as to reform of primary legislation

183. The recommended reforms outlined so far – and some potentially could be classified under more than one of the above headings – would lead to a consolidated text that is free from errors, ambiguities and obsolete material – and in modern language. They will make the new legislation and, more importantly, the planning system more accessible. Those reforms noted under the last of the above headings would also lead to the legislation according more closely with current practice.
184. However, as noted above, all the reforms noted so far have no costs other than the transitional costs associated with all law reform.⁶³ And they have no specific monetary benefits other than the general ongoing benefits identified earlier, which cannot realistically be quantified.⁶⁴
185. But we have also noted a number of other possible improvements to the law, and the procedures to which it relates, that might have either costs or benefits (or both) in addition to the more general costs or benefits identified above. We consider that some or all of these could usefully be implemented at the same time as the consolidation and clarification exercise considered so far. We consider each of these below, noting that they will generally have only minor cost implications, if any, and but may result in significant benefits.

(a) Pre-commencement conditions

The problem

186. Planning permission is sometimes granted subject to conditions (known as “pre-commencement conditions”) requiring that certain things are to be done before the development being permitted can lawfully be started. The law as to the

⁵⁹ See Recommendations 8-19, 8-21

⁶⁰ See Recommendation 8-24.

⁶¹ See Recommendations 15-11, 15-12

⁶² See **paragraphs 129 to 144** above.

⁶³ See **paragraphs 119 to 126** above.

⁶⁴ See **paragraphs 129 to 144** above.

enforceability of such pre-commencement conditions is far from clear, particularly in the light of a number of decisions of the higher courts, including *Whitley* and *Hart Aggregates*.

Our recommended reforms

187. We are recommending two legislative changes, to apply where permission is granted subject to such conditions:

- A successful applicant for permission may apply for a certificate stating that all of those conditions have been complied with, enabling development to start lawfully; and
- where development is started in breach of such conditions, and is as a result at present immune from enforcement action, the permission that would otherwise have authorised the development will be deemed to have been granted with the omission of those conditions, such that the remaining conditions will subsist and be enforceable.⁶⁵

Costs and benefits

188. As to the first, the availability of such certificates will result in applications being made for them, which will need to be determined by planning authorities. However, firstly, experience with certificates for certificates of lawfulness suggest that the number of such applications is likely to be modest. Secondly, assuming that a fee is charged for the submission of such an application, on a cost-recovery basis (as with an application for a lawful development certificate), there is no reason why this will result in extra net costs for authorities. If the fee charged is less than the expenses incurred (as is the case with planning applications), there will be a cost for the authority concerned. Taking these two points together, we consider that the cost to planning authorities of implementing this reform is likely to be small.

189. The ability to apply for a formal certificate will also avoid the need for informal enquiries (for which a fee cannot be charged), which may not put the matter beyond doubt, or litigation – which is expensive both for applicants and for authorities (and for the courts). There will thus be a significant benefit.

190. We were also told by housing associations that the ability to obtain such a certificate would assist with the obtaining of funding for complex developments, and thus increase the chance of such development coming forward without undue delay, which will result in wider benefits.

191. As to the second point, under the present law, the conditions other than the pre-commencement conditions would not subsist, and the only way the authority could enforce them would be to revoke the original permission and reissue it in an appropriately modified form. The proposed reform would make such action unnecessary, since the permission would continue to operate in the way which had been originally intended – by both the authority and the applicant. There

⁶⁵ See Recommendation 8-13.

would therefore be no cost to either party. But the change would result in a significant benefit, albeit in a small number of cases.

(b) Variation of planning permissions

The problem

192. Where planning permission has been granted, it is currently possible (under TCPA 1990, section 73) to seek permission to implement the permission but with a variation to one or more of the conditions attached to it. Where an applicant wishes to make a minor, “non-material” variation to a permission, an application may be made under section 96A. But where an applicant wants to make any other “material” amendment to a permission – that is, not to a condition – it is necessary to submit a fresh application.

Our recommended reforms

193. We are recommending that it should be possible to seek any variation to a planning permission, not just to a condition.⁶⁶ In practice this is likely to apply where the details of the development have been changed from those that were granted permission.

194. We also recommend that it should be possible to apply for expedited decision on an application to vary a permission – either under the section 73 procedure, as amended, or under section 96A – where the development is about to be started or is already under way.⁶⁷

Costs and benefits

195. As to the first point, this will potentially result in more applications under section 73, which will need to be processed by planning authorities. On the other hand, it will avoid the need to make a fresh applications in such cases, with all the consequential expenses involved (for both applicants and authorities) – for example, the need to notify statutory consultees. We consider that, on balance, there could be some net saving, both to the applicant and to the authority.

196. It may also lead to developers choosing to seek formal approval for such amendments, rather than simply proceeding with the development as originally permitted (but now considered to be less satisfactory) so as to avoid delay, or proceeding with the amended development without seeking approval, and hoping to avoid detection. Either course of action is unsatisfactory; and to avoid the need for one or other would be a benefit, albeit an unquantifiable one.

197. The number of applications under section 73 is currently unknown, as is the cost of dealing with such an application. But we consider it likely that the costs and benefits involved would be modest.

198. As for an application for an expedited decision, this would attract an additional fee; which should be set on a cost-recovery basis. Provided that indeed occurs,

⁶⁶ See Recommendation 8-23. The authority will still be able to require the applicant to submit a fresh application where it considers that the proposed amendment is such as to result in a different development.

⁶⁷ See Recommendation 8-25.

that should result in no additional costs being incurred by authorities, at least in the long term as they adjust staffing levels accordingly. However, in the short term, the receipt of additional fee income will not immediately result in an increased availability of staff, so there may be an additional workload of such urgent applications, resulting in staff being diverted from other tasks, which would result in other development being delayed.

199. This reform too may lead to developers choosing to seek formal approval for amendments in such cases, rather than simply proceeding with the development as originally permitted or proceeding with the amended development without seeking approval – which would be a benefit.

200. Again, the costs and benefits are likely to be modest.

(c) Planning obligations

The problem

201. A planning obligation (sometimes called a “section 106 agreement”) – normally, but not always, linked to a planning permission – is a means of ensuring that the development or use of the land in question is restricted, or that operations are carried out (on the land or elsewhere) or that the land is used in a particular way, or that money is paid to the planning authority. It is usually in the form of an agreement between the authority and the owners of the land in question, although an obligation can be entered into on a unilateral basis by the owner.

202. The use of such obligations enables an authority to secure the provision of benefits that cannot be secured by traditional planning conditions. But there are a number of problems with the detailed mechanics of the relevant legislation.

Our recommended reforms

203. We have generally recommended that the problems we have identified are considered at a later date, as part of a wider review of this area of law and practice. However, there are two modest procedural reforms that could usefully be implemented without further ado. We have thus recommended that the power to enter into an obligation should be extended so as to enable one to be entered into:

- by a planning authority in respect of land that it owns and is about to sell, or
- by a prospective purchaser of any land.⁶⁸

204. We have explained in our Final Report how this might operate in practice.

Costs and benefits

205. It is impossible to quantify accurately either the cost or the benefit of these proposals, as the suggested provisions do not currently exist, and it is not clear how many cases might benefit from their introduction.

⁶⁸ See Recommendations 10-10, 10-11.

206. It is clear that the entering into of such obligations would result in landowners and authorities incurring legal and other professional fees – the costs of securing a planning obligation are likely to be significant.
207. However, the ability to enter into an obligation in these two situations is likely to encourage the bringing forward of land for development in circumstances where it might otherwise have lain undeveloped, which would be a significant benefit.
208. We consider on balance that the potential benefits arising from this reform would outweigh the costs.

(d) Powers of inspectors

The problem

209. The overwhelming majority of decisions that require to be made “by the Welsh Ministers” are in fact made by inspectors on their behalf. However, inspectors do not yet have power to make decisions relating to various highways orders under Part 10 of the TCPA 1990, and appeals against unsightly land notices (under section 215). We recommend correcting this anomaly.⁶⁹
210. We are also recommending that inspectors be given powers to appoint assessors to assist them in appropriate cases – including in relation to written representations appeals.⁷⁰

Costs and benefits

211. The first change will lead to a slight saving of expense, as the need to refer a draft decision that has been made by an inspector for further approval by civil servants on behalf of the Welsh Ministers inevitably leads to delay and costs. However, the number of such decisions each year is very small, so the resulting benefit will be correspondingly modest.
212. There will obviously be costs associated with the appointment of assessors; however, the resulting decisions should be of higher quality, resulting in fewer court challenges. The overall cost impact of this reform is thus likely to be broadly neutral.

(e) Issue and service of enforcement notices etc

The problem

213. The relevant legislation used to refer to enforcement notices and various similar notices being “served” on those concerned. It was then held by the courts that this could lead to problems in certain circumstances, and the legislation relating to enforcement notices was accordingly amended so that it now refers to them being “issued”, with copies being “served” as required. However, corresponding changes were not made to the similar legislation relating to the service of analogous notices under the planning Acts – completion notices, temporary stop

⁶⁹ See Recommendations 11-9, 16-4.

⁷⁰ See Recommendations 9-3, 11-3, 11-4.

notices, breach of condition notices, stop notices, advertisement discontinuance notices, and unsightly land notices.

Our recommended reforms

214. We accordingly recommend that this anomaly should be rectified, along with some other minor technical changes relating to enforcement procedures.⁷¹

Costs and benefits

215. In 2016/17, 69 breach of condition notices and 8 stop notices were served in Wales⁷², along with an estimated 16 temporary stop notices.⁷³ The number of advertisement discontinuance notices is likely to have been small, and the number of completion notices almost nil.

216. It will be no more expensive to issue and serve the various notices under the new provisions than it is to serve such notices at present. But we consider that this will eliminate the risk of unmeritorious litigation based on such technicalities, which will be a benefit to planning authorities and to the courts. There will therefore be no costs associated with this reform, and a slight benefit.

(f) Compensation for stop notices

The problem

217. Where a stop notice is served by a planning authority and subsequently quashed, compensation is payable by the authority to anyone who was adversely affected. At present, where a stop notice is served by the Welsh Ministers, and subsequently quashed, compensation is payable by the authority.

Our recommended reforms

218. We recommend that compensation in such a case should be payable by the Welsh Ministers.⁷⁴

Costs and benefits

219. Anecdotal evidence suggests that the Welsh Ministers serve stop notices very rarely, if ever.

220. If they were to do so, this reform would not affect the liability to compensation, nor the quantum payable; nor do we consider that it will affect the number of stop notices served by the Welsh Ministers. It would increase the cost to the Welsh Ministers, but correspondingly reduce the cost to authorities, so there will be no net cost.

221. The benefit of this proposal will be that it will be perceived to be fairer than the present system, but that is clearly non-quantifiable.

⁷¹ See Recommendations 8-32, 12-6 to 12-8, 12-13, 12-17, 12-18, 16-3.

⁷² RTPI Toolkit.

⁷³ Estimate, based on figures for England in Harwood, *Planning Enforcement.*, 2013.

⁷⁴ See Recommendation 12-20.

(g) Liability for breach of notices

The problem

222. At present, a person who is in breach of the requirements of an enforcement notice is guilty of an offence unless able to prove:

- that he or she was not aware of the existence of the notice, *and*
- that he or she had not been served with a copy of it, *and*
- that the notice was not contained in the relevant register.

This can be difficult in practice, and leads to injustice.

223. A similar problem arises in relation to a prosecution for breach of a tree preservation order.

Our recommended reforms

224. We recommend that, in relation to an alleged breach of an enforcement notice, the prosecution should be required to prove either

- that the notice was in the register at the relevant time, *or*
- that the defendant was aware of the notice at the time –

That would result in a shift in the burden of proof from the defence to the prosecution.⁷⁵

225. We make a similar recommendation in relation to prosecutions for breach of a tree preservation order.⁷⁶

Costs and benefits

226. There are currently around 138 enforcement notices issued each year in Wales.⁷⁷ The number of prosecutions for breaches of a notice is unknown, but is likely to be small.

227. The proposed reform should lead to a reduction in the number of unmeritorious prosecutions mounted, and thus to greater fairness. However, given the low number of prosecutions generally, the monetary savings (benefit) is likely to be modest in financial terms.

228. The number of prosecutions for breach of a tree preservation order in Wales is unknown, but is likely to be small. Here too, the proposed reform will lead to great fairness, and modest financial benefit.

⁷⁵ See Recommendation 12-21.

⁷⁶ See Recommendation 15-16.

⁷⁷ RTPI Toolkit.

(h) Service of enforcement notices etc in relation to residential property

The problem

229. There are currently various provisions relating to planning enforcement that modify the normal procedures so as to provide protection for occupiers of “dwellinghouses”. In particular,
- 24 hours’ notice must be given before exercising powers of entry to enable investigations to take place into a property currently used as a dwellinghouse; and
 - temporary stop notices (TSNs) and stop notices cannot be served so as to bring to an end or prevent a property being used as a dwellinghouse.
230. It is not clear what is meant by the word “dwellinghouse” in this context, but it may apply only to traditional houses, so that no protection is provided for occupiers of other kinds of residential property – such as flats, maisonettes, houseboats, bedsits, and even tents (“alternative housing”).⁷⁸

Our recommended reforms

231. We are recommending that the word “dwelling” is used instead of “dwellinghouse” in these provisions, and that it is defined so as to include any form of residential accommodation. This will clarify the law, but will also provide equal protection for those living in all forms of housing.

Costs and benefits

232. There are no figures as to the number of cases of enforcement action being taken in relation to those living in alternative housing.
233. This reform may prevent enforcement action being taken inappropriately in such cases, which will be a significant, but unquantifiable, benefit. It will still be possible for investigations to take place in relation to alternative housing, but 24 hours’ notice will need to be given – resulting merely in enforcement action being delayed. It is likely that such cases will be very rare; and the delay will in any event not impose any significant cost.
234. The inability to serve TSNs and stop notices so as to prevent property being used as alternative housing is not likely to result in significant costs, and that number of instances where an authority would wish to do so is likely to be very small.

(i) Penalties for planning offences

The problem

235. There are a range of offences under the planning Acts – relating to the enforcement of planning control – that are broadly similar in nature but that attract varying penalties. In some cases they are triable summarily, in others also in the

⁷⁸ See Recommendations 12-2, 12-5, 12-16.

Crown Court; in some cases they can lead to imprisonment, in others just to a fine – either unlimited or up to Level 3.

236. The display of outdoor advertising without consent is a criminal offence. We are aware that the unauthorised display of advertising can result in significant financial gains for advertisers; but the penalties that can be imposed in the event of a prosecution are very modest, and out of line with penalties for other breaches of planning control.
237. At present, there are two offences under section 210 for unauthorised works to protected trees. One, relating to works liable to lead to the death of the tree, is triable either way and can result in an unlimited fine; the other, for lesser works, is triable only in the magistrates' court and leads only to a maximum fine of level 4 (currently £2,500). This is in contrast to sentencing for offences of unauthorised works to listed buildings, which attract in all cases an unlimited maximum fine (regardless of the type of trial).

Our recommended reforms

238. We have recommended that the enforcement offences should all be triable either way, and all punishable only by a fine (of any amount).⁷⁹
239. We have suggested a significant increase in the maximum fine that can be imposed in the event of conviction for the unauthorised display of advertising,⁸⁰
240. And we recommend that the two offences relating to unauthorised works to protected trees should be conflated into one, triable either way and leading to an unlimited fine.⁸¹

Costs and benefits

241. The availability of higher penalties might lead to a marginal increase in the number of prosecutions for breaches of planning control (including for unauthorised advertising or works to protected trees). If that were to occur, it would result in increased expenditure on litigation in the short term.
242. In the longer term, the greater penalties may lead to a drop in unauthorised activity, which would be a significant but unquantifiable benefit. More generally, the changes will result in a generally fairer system, which would be a further significant (but, again, unquantifiable) benefit.
243. The availability of the same penalties in either the magistrates' courts or the Crown Court may lead to a drop in the number of cases going unnecessarily to the Crown Court, which would be a saving – as Crown Court trials are significantly more expensive than trials in magistrates' courts..

⁷⁹ See Recommendations 12-24, 12-25.

⁸⁰ See Recommendation 14-13.

⁸¹ See Recommendation 15-15.

(j) Works to listed buildings etc

The problem

244. At present, some alterations to listed buildings (notably those affecting the interior, certain minor works affecting the exterior, and demolition) need listed building consent (LBC) but not planning permission. There are currently around 830 applications for such works in Wales each year.⁸² Other building works affecting a listed building need both LBC and planning permission. There are currently around 550 such applications in Wales each year.⁸³
245. Works affecting the setting of a listed building, but not affecting the building itself, need planning permission but not LBC – there are no estimates of the number of such cases, as there is no precise definition of what “affects” the setting of a listed building.
246. Applications for LBC and applications for planning permission are both submitted to and determined by planning authorities, with elaborate requirements as to consultation with third parties. Appeals against decisions are in either case made to and determined by the Planning Inspectorate.
247. This leads to a significant degree of overlap and duplication.
248. The demolition of an unlisted building in a conservation area needs conservation area consent (CAC). There are currently between 100 and 150 applications for CAC each year.⁸⁴ Such works also need planning permission, but permission is usually granted automatically by the General Permitted Development Order (GPDO).

Our recommended reforms

249. We are recommending that this be simplified by amending the definition of “development” so as to include any works to a listed building (including works to the interior). That would have the result that all works to a listed building would need planning permission, and the statutory code relating to LBC (including listed building enforcement notices) could then be repealed.⁸⁵ The carrying out of unauthorised works to listed buildings would remain, as at present, a criminal offence.
250. We are also recommending that the requirement for CAC is abolished, so that demolition in a conservation area would require only planning permission – and that such permission would no longer be granted by the GPDO.

Costs and benefits

251. The effect of these reforms would vary, depending on the nature of the application in question.

⁸² Final Report, paragraph 13.14 and Table 13.1.

⁸³ Final Report, paragraph 13.14 and Table 13.1.

⁸⁴ Final Report, paragraph 13.14 and Table 13.1.

⁸⁵ See Recommendation 13-1.

(a) Works that currently only require LBC or CAC

252. Works that currently require (only) LBC would in future require only planning permission. An application to the planning authority would still be required, but it would be for planning permission rather than LBC. This would not result in any additional expenditure by either applicants or planning authorities, and would lead to some modest savings in that there would not be a need for separate forms, information sheets etc for LBC (distinct from those used for applications for planning permission). There is at present no fee for making an application for LBC; we recommend that there should be no fee for an application for planning permission for works in this category.
253. Similarly, works that currently require an application for CAC (and for which planning permission is currently granted automatically) would in future require only an application for planning permission. This too would not result in any additional expenditure by either applicants or planning authorities, and may lead to some modest savings, with no need for separate forms etc for CAC. We recommend that there should be no fee for an application for planning permission for works in this category either.

(b) Works that currently require both LBC and planning permission

254. Works that currently require both LBC and planning permission would in future need only planning permission. This would result in a saving, in that only one application will be required, with one set of drawings, leading to only one committee report, and one decision notice. If permission is not forthcoming, only one appeal would be required (instead of the two that are needed at present).
255. This would represent a major simplification of the legislation, in that it would enable all of the primary and secondary legislation relating to listed building consent to be repealed – with no need for separate procedures, forms, and so on. However, the financial savings are likely to be real, but modest.
256. It is difficult to be certain how much time would be saved as a result of this avoidance of duplication; but if it were to save the relevant planning authority on average one hour in relation to each of the 550 such cases in a typical year⁸⁶, that would lead to an average saving of 550 hours of planning officer time. At a rate of £30 per hour, plus overheads – say, £50 in total – that would result in a saving of or £27,500 – per annum; or £275,000 over ten years.
257. Applicants too will benefit in relation to works that currently require both forms of authorisation. In future, only one application will be required in each case - with one application form, one ownership certificate, one set of drawings and other illustrative material, and one design and access statement – and, if necessary, one appeal. This will be a significant benefit. Here too, if this leads to a saving of time similar to that of the planning authority that would lead to a benefit of £27,500 per annum; or £275,000 over ten years.

⁸⁶ See **paragraph 244** above.

258. Clearly if the saving in time were to be greater, on the part of either planning authorities or applicants, the resulting would be greater.
259. There is no fee for making an LBC application, so the merger of consents will not lead to a saving on that account; but a few authorities do charge a fee for pre-application discussions in connection with applications for LBC.⁸⁷ If there is only one application, there will clearly be only one discussion, and therefore only one fee. This will lead to a slight loss of income (cost) for those authorities that currently charge a separate fee for a LBC pre-application; but a corresponding benefit for those prospective applicants who do not have to pay it.
260. We thus consider that there could be a net benefit of as much as £550,000 in a typical year arising from the reduced costs of submitting and processing such applications

(c) Works that currently only require planning permission

261. Thirdly, in relation to works that currently require only planning permission, there will be no change – although there will be a slight simplification of the law, in that there will be no question of listed building consent being required.
262. In all cases, precisely the same procedural requirements would continue – for example, as to notification of third parties, amenity groups etc. – so that will not lead to any costs or benefits. There will be no reduction in fee income to authorities – since no fee is payable for listed building consent applications.

Unauthorised works (enforcement)

263. The carrying out of unauthorised works would still be the subject of enforcement action. Again, the consequences of that would depend of the nature of the works involved.
264. Where the works fall in the first of three categories noted above – those that currently require only LBC or CAC – that would result in the issue of a planning enforcement notice, rather than a listed building enforcement notice or conservation area enforcement notice. This too would result on no additional expenditure, and modest savings.
265. Where the works are in the second category – currently requiring both planning permission and LBC and CAC – the result would be the issue of one enforcement notice, not two.⁸⁸ And if there were to be a challenge to such action, there would only be a need for a single appeal, not two as at present. That would be a significant simplification of the law, which would be a benefit both to authorities and landowners. However, the number of such cases is not probably great, and the financial savings would be correspondingly modest.

⁸⁷ Ceredigion and Denbighshire each charge £36 for a half-hour meeting; Brecon Beacons charges £50 for a written response and £100 for a site visit.

⁸⁸ See Recommendations 13-7, 13-8.

266. Enforcement action in relation to unauthorised works in the third category would be just as present, leading to neither benefits nor savings.
267. An alternative to enforcement action, applicable in the case of works affecting listed buildings and demolition in conservation areas, is criminal prosecution. This would still be possible if our recommendations were to be accepted, but the test would be whether the works in question had been carried out without the benefit of planning permission, rather than without LBC / CAC.⁸⁹ There would therefore be no financial consequence in that respect.

Other associated changes

268. The powers of the Welsh Ministers to grant planning permission by a development order (the procedure known as “permitted development”) will be removed in cases involving works to listed buildings, which will mean that planning permission will need to be sought, by means of an application to the planning authority, in some cases where it is currently granted automatically. However, in all such cases there is currently a requirement to apply for LBC, so there will not be any extra expenditure required on the part of either applicants or planning authorities.
269. It will be possible for a heritage partnership agreement to grant planning permission for certain works, just as such an agreement can currently grant LBC. Here too, therefore, there will be no financial cost or benefit.
270. Appeals will be in principle just as at present – save that where at present there are two appeals, against the refusal of both LBC and planning permission, there would in future be only one, which will simplify appeal procedures and consequently save time. Grounds of appeal in cases involving works to listed buildings would remain just as at present.⁹⁰

General costs and benefits

271. More generally, many respondents to the Consultation Paper emphasised their view that there would be a perceived loss of control over works to historic buildings, and thus a perceived loss of specialness. We do not share that view, but if it were to occur, that would clearly be a significant cost – albeit one that would be entirely unquantifiable in money terms.
272. As against that, the overall monetarised benefit from, in effect, doing away with two whole types of consent (listed building consent and conservation area consent) is likely to be greater than indicated above, as the removal of a whole code of consent would significantly simplify the law.

⁸⁹ See Recommendation 13-6.

⁹⁰ See Recommendation 13-5.

(k) Certificates of lawfulness

The problem

273. It is possible to apply for a “certificate of lawfulness” determining whether an application for planning permission is required for development that is about to be carried out or that has been completed. But it is not possible for such a certificate to be obtained as to the need for an application for listed building consent, conservation area consent, advertisements consent or consent for works to protected trees. This is particularly unfortunate, as in all such cases a failure to obtain the relevant consent, if it is required, amounts to a criminal offence.

Our recommended reforms

274. We recommend that the certificate procedure should be extended to enable anyone to establish definitely the need for

- listed building consent or conservation area consent (if they are retained)⁹¹; and
- advertisements consent or consent for works to protected trees.⁹²

Costs and benefits

275. As with pre-commencement conditions, the availability of a certificate procedure will result in some applications being made for such certificates, which will need to be determined by planning authorities. However, here too, assuming that a fee is charged for the submission of such an application, on a cost-recovery basis the extra net cost for authorities should be nil. If the fee is insufficient, there will be a cost, but the number of such applications is likely to be small.

276. We recognise that, in the short-term, the availability of additional fee income, in respect of applications for certificates, will not immediately translate into additional staff resources.

277. However, in discussions with stakeholders, they emphasised that merely because a certificate procedure is available does not mean that it is used frequently. Thus, the existing procedure in relation to the need for planning permission is useful, in that it concentrates the minds of authorities, and enables prospective applicants to obtain a binding decision in the event of a breakdown in informal discussions as to the need for permission. But in practice the number of formal applications for certificates is small – compared to 26,983 applications for planning permission. We imagine that the same would apply in relation to these other types of consent.

278. Thus, in a typical year, there are 922 applications for listed building consent (across Wales), between 100 and 150 for conservation area consent, and 1091 for advertisements consent. In the great majority of cases, the need for the relevant consent would be quite clear, and there would as a result be no need for

⁹¹ See Recommendation 13-4.

⁹² See Recommendations 14-9, 15-9.

a formal application for a certificate. The number of applications that would need to be made and processed each year would thus only be very modest. The same would apply in relation to tree consent.

279. The ability to apply for a formal certificate will also avoid the need for informal enquiries (for which a fee cannot be charged) – which may not put the matter beyond doubt – or litigation, which is expensive both for applicants and for authorities (and wastes court time). There will thus be a significant benefit; although, once again, this is impossible to quantify.
280. It is also important, as a matter of principle, that a citizen should be able to obtain a definitive ruling as to potential liability to criminal prosecution.
281. Overall, therefore whilst we recognise that these reforms would lead to some additional costs being incurred by planning authorities, we consider that they are likely to be broadly cost neutral.

(I) Unauthorised advertisements, graffiti and fly-posting

The problem

282. At present it is possible for planning authorities to remove unauthorised posters and placards, but not (at least in most of Wales⁹³) the hoardings to which they attached.
283. There are also no specific powers to enable authorities to remove graffiti and fly-posting, as there were in Wales, and as there are in England.

Our recommended reforms

284. We have recommended the introduction of a new power, alongside the existing power relating posters and placards, enabling an authority to remove any advertisement – subject only to a right of appeal to the magistrates' court on technical grounds.⁹⁴
285. We have also recommended the introduction of new powers for the Welsh Ministers to introduce regulations enabling authorities to remove graffiti and flyposting.⁹⁵ The details of such regulations would need to be considered carefully, in the light of the experience of authorities that have used such powers elsewhere in England and Wales.

Costs and benefits

286. In our Consultation Paper, we sought views as to the resources implications of introducing powers for planning authorities to remove advertisement hoardings, and no-one objected on cost grounds – indeed, although the proposal was almost universally supported, no-one mentioned costs at all. Clearly, if an authority were to use its new powers, that would result in it incurring expense; but its decision to

⁹³ A power to remove hoardings etc is available under the Dyfed Act 1987, in Ceredigion, Carmarthenshire and Pembrokeshire.

⁹⁴ See Recommendation 14-12.

⁹⁵ See Recommendation 16-7.

do so would be entirely discretionary. Further, the mere threat of an unauthorised hoarding being removed is likely to lead to it being removed by the advertiser in many cases. The new procedure would therefore probably not be much used in practice – so as to involve an authority actually removing advertisements, as opposed to merely threatening to do so.

287. We therefore consider that in the short term there might modest costs arising to authorities that choose to exercise their new powers – and in the long term a fall in the number of unauthorised advertisements, which would be a public benefit. We therefore consider that this reform would be broadly cost neutral.
288. Similarly, if new powers to enable authorities to remove graffiti and flyposting were to be introduced, and if an authority were to take advantage of those powers to remove offending material, that would result in it incurring expense; but the decision to do so would be entirely discretionary. But the use of such powers in appropriate cases would bring about a considerable improvement of urban areas, which would be a wider public benefit.
289. Here too, therefore, we therefore consider that this reform would be broadly cost neutral.

(m) Widening the definition of “amenity” in relation to tree preservation orders

The problem

290. The law has always provided that tree preservation orders can only be made in the interests of “amenity”. On a narrow interpretation, this relates only to visual amenity – what a tree looks like. But some case law suggests that other factors (such as rarity, age, and habitat value) may also be relevant; the position is currently not clear.

Our recommended reforms

291. We are recommending that the new Bill should state explicitly that the wider definition will apply in future, with powers for the Welsh Ministers to include in secondary legislation guidance as to what factors may be taken into account.⁹⁶

Costs and benefits

292. It may be that this reform is no more than clarifying the law as it stands – so that the wider definition already applies. If that is the case, the new wording will merely make that clearer, so that it will not be necessary for the matter to be resolved in the courts. That will result in a benefit, in that it will avoid the cost of possible future litigation, and possible subsequent change to the legislation to make the position clear; but there will be no other cost or benefit.
293. Or it may be that the correct view of the law is that the narrower definition (whereby “amenity” means only visual amenity) applies at present. In that case, the proposed reform will enable tree preservation orders to be made in circumstances where they cannot currently be made. The Act merely provides

⁹⁶ See Recommendation 15-2. This also brings the law in Wales in line with the position in Scotland, following recent amendments.

a power to make orders, not a duty; the making of such additional orders would therefore be entirely discretionary. But if the widened power were to be used to make orders that cannot be made at present, that would result in an extra financial burden for planning authorities.

294. The number of additional orders that would be made, and thus the extra cost for authorities, cannot be predicted with any certainty; but we consider that it is likely to be very small.
295. Once an order has been made, it requires consent to be obtained for works to the newly protected tree, which will represent a modest cost to the owner of the tree, and a modest cost to the planning authority that will have to determine the application for consent. But the number of trees that will, as a result, be able to be protected is likely to be small; and the number of applications for consent even smaller. In the event that such an application does not lead to consent being granted, compensation is payable by the authority – either to the owner of the tree or to anyone else adversely affected. This means that an authority is unlikely to refuse consent in circumstances where that would result in a financial burden.
296. In practice, therefore, the cost of any additional applications for consent would be limited to the actual cost of processing the application (for the applicant, the authority and, occasionally, the inspectorate where there is an appeal), rather than any wider financial disbenefit. Again, we consider that this is likely to be very small.
297. However, this reform will have a general benefit in that the law will have been clarified. It will also have a more specific benefit in that an opportunity will have been provided for trees to have been protected that would otherwise not have arisen. That benefit, although real, is unquantifiable.

(n) Tree preservation orders

The problem

298. Tree preservation orders can be made to protect trees specified by reference to individual specimens, groups, areas or woodlands. All orders are made on a provisional basis, and have to be confirmed within six months.

Our recommended reforms

299. We have recommended that the Bill makes clearer the powers to make individual, group and woodland orders.
300. We have also recommended that the use of area orders should be limited, by requiring them to be converted to one of the other types of order when they are confirmed.⁹⁷

⁹⁷ See Recommendation 15-3.

Costs and benefits

301. The first of these recommendations will be a clarification of the existing law, including case law, and thus will impose no costs or benefits (other than the general benefit arising from the law being clearer).
302. The second recommendation may require a small amount of additional work by authorities when confirming such orders, but will result in much clearer orders once they have been confirmed – which in turn will make for much more straightforward procedure in the event of subsequent applications for consent or prosecutions for unauthorised works.
303. There are a small number area orders made each year in Wales, so we expect that there will be only a minimal net cost or benefit.
304. We thus consider these reforms to be broadly cost-neutral.

(o) *Trees in conservation areas*

The problem

305. Where works are proposed to a tree that is in a conservation area but not protected by a tree preservation order, it is necessary for anyone proposing to carry out works to it to notify the planning authority, which then has six weeks within which it can impose an order to protect the tree. If the authority does make an order, the applicant must then apply for consent under the new order. This is a somewhat cumbersome system
306. At present, it is likely that few such notifications are received each year in Wales, of which even fewer result in the making of an order, or in the receipt of an application for consent.

Our recommended reforms

307. We have suggested that the procedure is improved so that once the authority has been notified, there is no need for a second application to be made.⁹⁸

Costs and benefits

308. This will significantly simplify the procedure, and will save several hours in respect of each such application. However, in the light of the modest number of relevant cases, the overall benefits are likely to be modest in financial terms

(p) *Exemptions from the need for consent for tree works*

The problem

309. Works to a tree that is protected by a tree preservation order generally need consent from the planning authority. But this is subject to a number of exceptions. For example, consent is not required for works to trees that are dangerous, or for works necessary to abate a nuisance. The extent of these exemptions is unclear.

⁹⁸ See Recommendation 15-17.

Our recommended reforms

310. We recommend that the “dangerous” exemption should be clarified so that it applies only where works are urgently necessary to remove an immediate risk of serious harm.⁹⁹
311. We also recommend the removal of the exemption from the need for consent where works are carried out to a tree “in order to abate a nuisance” – so that, in particular, consent is needed for works to a protected tree whose roots or branches grow close to or across property boundaries, just as in any other case.¹⁰⁰

Costs and benefits

312. The proposed amendment to the “dangerous” exemption will result in more applications being necessary for consent to remove trees (or branches) in circumstances where, probably, no consent is required at present. However, proposals to do works to dangerous trees currently need to be notified to planning authorities, which then have an opportunity to check that the tree in question is indeed dangerous, and impose a condition requiring a replacement tree to be planted. It is therefore likely that – seen from the point of view of either the applicant or the authority – a requirement to obtain the consent of the authority will not lead to any greater investment of time, and therefore cost, than a requirement to notify it under the existing system
313. It might seem that the removal of the “nuisance” exemption could lead to a significant increase in the number of applications for consent, since many protected trees grow across or close to boundaries. However, the law is at present so uncertain – and the penalty for making a mistake so great (potentially a substantial fine and a criminal record) – that a prudent tree-owner in such a case will almost always make an application simply to be on the safe side, whether or not it is strictly required. Removal of the exemption will therefore probably lead to very few additional applications being submitted.
314. We thus consider that the additional cost, if any, of both these reforms is likely to be very modest.
315. But each will mean that there will be fewer cases trees being removed that could easily have been saved, which will be a general benefit.

(q) *Unsightly land notices*

The problem

316. An authority may issue a notice under section 215 of the TCPA 1990 to bring about the restoration of unsightly land; and if the notice does not achieve the desired result, the authority may prosecute the owner of the land, or require the owner to clear the land, or enter the land and clear it up itself, recovering the cost of doing so from the owner.

⁹⁹ See Recommendation 15-5.

¹⁰⁰ See Recommendation 15-6.

317. In a few cases, the condition of the land may be the result of the action of third parties – notably flytippers and others depositing controlled waste. In such cases, action may also be taken under section 59 of the Environmental Protection Act 1990, which enables an owner to have the notice quashed. That in turn means that the authority, if it wishes to see the rubbish removed, is forced to carry out the necessary clearance itself, and recover the cost from the person responsible; alternatively it may have to carry out the work at its own cost..

Our recommended reforms

318. We have recommended that the law be slightly tightened up so that a notice under section 215 may not be issued where the condition of the land results from the deposit of controlled waste.¹⁰¹ This would ensure that, where waste has been deposited by someone other than the owner of the land, the authority has to take action under section 59 of the Environmental Protection Act 1990, with the result that the owner is not liable to pay for its removal.

Costs and benefits

319. This reform might, at least in theory, lead to an increased cost in that that the authority will in future have to pay for the necessary remedial work itself – assuming that it cannot find the person who was responsible. However, the number of cases where a section 215 notice is currently served in such circumstances is likely to be extremely small

320. The result of the change will be that, where land is subject to the tipping of controlled waste, the cost of the necessary clearance operations will in practice be borne by the authority, not by the owner of the land. That is merely transferring the cost from one stakeholder to another, and is thus cost-neutral.

(r) Correction of errors

The problem

321. Where a planning decision is challenged in the High Court, the decision-maker may consider that the alleged defect arises from an error that can easily be corrected. At present, if such an error is discovered only at the end of the six-week period for making the challenge, there is no time for it to be corrected, resulting in litigation proceeding unnecessarily.

Our recommended reforms

322. We have accordingly recommended that the procedure be amended by the challenge period being suspended for up to two weeks, so that the error can be corrected without the delay (and cost) of going through court proceedings.¹⁰²

Costs and benefits

323. This would potentially save the cost of court proceedings – which can be considerable – in the few cases where it is relevant. It may not result in the

¹⁰¹ See Recommendation 16-1.

¹⁰² See Recommendation 17-2.

litigation being avoided altogether, where it is going ahead anyway for other reasons, but even in such cases it may avoid time having to be spent on a point that is capable of easy resolution.

324. The cost of proceedings in the High Court varies hugely, depending on the nature of the substantive issues at stake. But it can be considerable, taking into account the costs of all the parties (and those of the court itself). If this reform were to save even one case per annum, it would result on a significant saving (benefit). A partial saving – removing one possible cause of dispute – would save a proportion of that sum. It is not known how many cases there are that could be settled in this way.

(s) Alteration of fee levels

The problem

325. Finally, fees can be charged for the performance of any functions under the planning legislation.

Our recommended reforms

326. We have recommended that where such fees are to be altered, this could be done by publication of a new table of fees rather than by prescription (making new regulations).¹⁰³

Costs and benefits

327. This would be administratively more straightforward, and would result in a saving of costs for the Welsh Government. It is unlikely to result in a cost for any other stakeholders, as the fees will still be amended anyway; it is merely the procedure by which such an amendment can be achieved that will be changed.
328. The level of fees changes, on average, every two years. The savings resulting from this reform are difficult to quantify.

(8) Reform of secondary legislation and guidance

329. In addition to the various recommendations we have made as to possible changes to primary legislation, we have also made noted some changes that should be made to secondary legislation – in addition to moving material from primary to secondary legislation and vice versa.¹⁰⁴
330. We have, firstly, recommended that the DMP(W)O 2012 be amended in relation to the approval of details, and the notification of call-in.¹⁰⁵
331. In relation to advertisements, the law as to which is largely contained in regulations, we have recommended changes to the issue of discontinuance

¹⁰³ See Recommendation 18-9.

¹⁰⁴ See **paragraph 165** above.

¹⁰⁵ See Recommendations 8-20, 8-27.

notices (), and a tightening-up of the rules as deemed consent granted for advertisements with planning permission, advertisements on vehicles, and advertisements displayed for many years.¹⁰⁶ In relation to works to protected trees, also generally governed by regulations, we have recommended a number of minor changes – as to notifying the making of TPOs, and the consent procedure under an order.¹⁰⁷

332. We have also made some recommendations as to matters to be included in Welsh Government guidance – as to duties under other legislation (Recommendation 5-8), conditions on planning permission (8-11 to 8-13, 8-18), processing applications (8-28), obligations (10-7), appeals and inquiries (18-11) and enforcement (12-11).¹⁰⁸

Costs and benefits

333. The costs and benefits of the recommendations identified under this heading are not included in this Impact Analysis, which is limited to the recommended changes to primary legislation.

(9) Transitional and saving provisions, and consequential amendments

334. There will be a need for transitional and saving provisions, and consequential amendments and repeals of existing legislation – including amendments to ensure that existing legislation continues to operate correctly in England. And there will be a need for consequential amendments to secondary legislation and guidance.

335. No recommendations for such provisions are being put forward by the Commission at this stage; the need for them will emerge in the course of the drafting of the new Planning Bill.

Costs and benefits

336. The need for these transitional and saving provisions, and consequential amendments and repeals of existing legislation arises from the implementation of our recommendations summarised above. It follows that they do not give rise to any costs and benefits other than those already identified.

(10) Summary of costs and benefits arising from implementing Option 1 in full

337. The costs and benefits identified above can be summarised as shown in **Table 05**. It will be noted that most of the reforms are shown to have costs or benefits (or both) that have not been precisely quantified in monetary terms. This is because, for the reasons already explained, the precise figures are bound to be unknown.

¹⁰⁶ See Recommendation 14-5; 14-7, 14-8, 14-10.

¹⁰⁷ See Recommendations 15-4, 15-8, 15-10, and 15-13.

¹⁰⁸ See Recommendations 5-8; 8-11 to 8-13, 8-18;

Table 05. Option 1 (consolidation with technical reform): Costs and benefits: Summary table			
Reform (or group of reforms)	Cost	Benefit	See paras
	Figures are broad estimates over ten years, for all of Wales		
	Where no figure is given, cost/benefit is real, but unquantifiable		
(1) Option 1 considered as a whole	Modest		119-127
		£7.2m	129-144
(2) Consolidation, with some clarification	Nil	Nil, save as identified at (1) above	154-156
(3) Matters not to be included in legislation	Nil	Nil, save as identified at (1) above	158-159
(4) Existing law to be improved	Nil	Nil, save as identified at (1) above	166-167
(5) Obsolete and unnecessary provisions to be omitted	Nil	Significant, additional to benefits identified at (1) above	175-176
(6) Existing legislation to be adjusted to accord with current practice	Nil	Nil, save as identified at (1) above	181-182
(7) Other recommendations as to reform of primary legislation:	General costs and benefits identified at (1) above, plus those identified at (a) to (s) below		
(a) Pre-commencement conditions	Small	Significant	188-191
(b) Variation of planning permissions	Modest	Modest	195-200
(c) Planning obligations	Slight net benefit		205-208
(d) Powers of inspectors	Broadly neutral		211, 212

(e) Issue and service of enforcement notices etc	Nil	Modest	216, 217
(f) Compensation for stop notices	Broadly neutral		219-221
(g) Liability for breach of notices	Modest	Modest	226-228
(h) Service of enforcement notices etc in relation to residential property	Very small	Significant	232-234
(i) Penalties for planning offences	Modest in short-term	Significant	241 – 243
(j) Works to listed buildings and in conservation areas - applications	Nil	Significant	251-262
- enforcement	Nil	Significant, but modest	264-267
- other associated changes	Nil	Nil	268-270
- general costs and benefits	Possibly significant	Significant	271-272
(k) Certificates of lawfulness	Broadly neutral		275-281
(l) Unauthorised advertisements, graffiti and fly-posting	Broadly neutral		286-289
(m) Widening definition of “amenity”	Modest	Significant	292-297
(n) Tree preservation orders	Broadly neutral		301-304
(o) Trees in conservation areas: changing procedure	Nil	Significant, but modest	308
(p) Exemptions from tree consent	Modest	Significant	312-315
(q) Unsightly land notices	Broadly neutral		319-320
(r) Correction or errors in court proceedings	Nil	Significant	323-324
(s) Alteration of fee levels	Nil	Modest	327-328
(8) Reform of secondary legislation and guidance	Not included in this Analysis		333
(9) Transitional and saving provisions, and consequential amendments	Not included in this Analysis	

338. Because many of the costs and benefits have not been quantified, it makes little sense to total the costs and the benefits for Option 1 as a whole. However, we consider that the overall benefits arising from the implementation of Option 1 are likely to exceed the costs by a significant margin.

Partial implementation of Option 1

339. Clearly it would be possible to implement some rather than all of the reforms that form part of Option 1. In particular, it would be possible to implement the reforms identified under headings (1) to (6), and a selection of those under heading (7).

Costs and benefits

340. If this were to be done, the costs and benefits would vary according to the package of reforms that was eventually implemented.

J. Cost benefit analysis: Option 2 (consolidation with no technical reform)

341. Option 2 consists of a traditional consolidation exercise with no additional reform. It therefore involves merely a restatement of the existing law in a single Act, with all of its existing shortcomings and drawbacks.¹⁰⁹ This would be in effect to implement the recommendations identified in relation to Option 1 under headings (1) to (3).

342. This would have some benefits. It would meet the first of the four policy objectives identified at the outset.¹¹⁰ And it would be preferable to Option 0 (retain the status quo).

343. But it would not deliver the second, third and fourth basic policy objectives. And it would not deliver the benefits associated with our recommendations under the heading “Other recommendations”.

344. Note that, as with Option 1, Option 2 could be progressed alongside the emergence of a consolidated Historic Environment (Wales) Bill – if that is brought forward. 8

Costs and benefits

345. The costs of delivering Option 2 would be similar to the costs of Option 1 considered as a whole – in terms of the professional input into the drafting, the time of the Assembly, and the subsequent training necessary.¹¹¹

346. It would deliver some of the general benefits identified in relation to Option 1.¹¹² But it would perpetuate all of the problems inherent in the present legislation, identified under headings (4) to (8).

¹⁰⁹ See **Paragraphs 105, 106** above.

¹¹⁰ See **paragraphs 26 to 31** above.

¹¹¹ See **paragraphs 119 to 126** above.

¹¹² See **paragraphs 118 to 156** above.

K. Specific impact tests

Welsh language

347. The existence of a single statutory code will make it more straightforward to ensure that all planning legislation is and will be from now on drafted in both English and Welsh. This has been the case in relation to secondary legislation for some while, but primary legislation has largely been drafted in Westminster.
348. Even where the National Assembly has passed relevant legislation – such as the Planning (Wales) Act 2015 – the main text of the Act is available in both languages, but many of its provisions are drafted as amendments to existing English-only provisions (notably those of the TCPA 1990), and are therefore drafted only in English. Once the new Bill has been enacted, in both languages, the same logic will apply in reverse, so that amendments to it – whether made in Cardiff Bay or Westminster – will also be in both language.
349. This will greatly simplify the pattern of bilingual legislation, and references from primary to secondary legislation and vice versa. It will also act as a useful precedent to encourage the production of further bilingual codes.
350. For this reason, either Option 1 (consolidation with reforms) or Option 2 (consolidation without reforms) will have significant benefits for the use of the Welsh language.
351. Secondly, we recommend in the Final Report that the duty to have regard to the effects of a decision on the use of the Welsh language – which currently applies only to the determining of planning applications and the appraisal of draft development plans – should in future apply to the carrying out by decision makers of any function under the Planning Code – other than those relating to the determination of applications for certificates, or claims for compensation. This significantly extends the scope of the duty.
352. Our proposed reforms – which for present purposes form part of Option 1, but not Option 2, will thus have a significant additional benefit for the use of the Welsh language.

Justice system

353. The impact on the justice system has been considered throughout this impact assessment, in that the courts and members of the legal professions are amongst the key stakeholders whose interests we have been considering in relation to our proposed reforms.
354. Generally, the simplification of the legislation in the manner we are proposing will be a significant improvement for lawyers and courts, in that legal research, providing legal advice, and conducting litigation will all be more straightforward. That will be a benefit that will arise in connection with either Option 1 or Option 2.
355. The implementation of some or all of the reforms envisaged in Option 1 will also reduce the need for litigation, which will be a benefit in saving court time, and –

perhaps more significantly – saving the time of potential litigants and their advisers.

356. More specifically, we are recommending that the statutory challenge procedure (under Part 12 of the TCPA 1990) should be merged with the general judicial review under Part 54 of the Rules of the Supreme Court. That will considerably simplify the relevant procedure, and facilitate access to the courts to remedy injustices perceived to have arisen in the operation of the planning system. And we are recommending the rationalising of criminal penalties for breaches of planning control. These reforms will be a benefit for the justice system.

Environmental impact and wider environmental issues

357. The planning system forms one major element in the process by which the environment is protected and, where possible, improved. The general improvement of the legislation underpinning that system – either as envisaged in Option 1 (consolidation with reform) or Option 2 (consolidation without reform) – will therefore constitute a benefit in relation to the environment. And clearly the benefit arising from Option 1, including a variety of reforms, will be greater than would arise under Option 2, which merely codifies the existing position.
358. We are not making any recommendations as to the requirement for an environmental impact assessment (EIA) to be carried out in relation to proposed new development. The EIA requirement was originally under powers in the European Communities Act 1972; similar powers were only added into the TCPA 1990 by way of a later amendment. It is likely that they will be more satisfactorily incorporated into the new Bill.
359. We invited the views of consultees as to whether the requirement to conduct a strategic environmental assessment (SEA) of emerging policies and plans adds anything to the requirement to carry out a sustainability appraisal (SA). In the light of the responses we received, we have recommended the retention of both requirements, but that guidance as to the SA requirement should make it plain that it should not add an extra burden to the SEA.

Sustainable development

360. There is currently an explicit duty in the Planning (Wales) Act 2015 requiring authorities to carry out some of their functions under the TCPA 1990 and the PCPA 2004 – as part of their duty under the Well-being of Future Generations (Wales) Act 2015 – to carry out sustainable development. That duty under the Well-being Act applies in relation to the carrying out of any function, under any statute.
361. We have recommended – as one of our reforms in Option 1 – that the specific planning duty should not be restated in the new Bill, but instead that the wider duty under the Well-being Act should be included in a comprehensive list of all the duties applying in relation to the exercise of any statutory function, or any planning function. The net result of this should be that the nature of the duty under the Well-being Act, and its far-reaching scope, will be emphasised.

The wider environment, equality and human rights

362. We have recommended – again, as one of our reforms in Option 1 – that there should be included in Welsh Government guidance a comprehensive list of statutory duties applying to the performance of functions under planning legislation.
363. This will include, amongst other items, the general statutory duties relating to biodiversity, as well as specific duties relating to national parks, areas of outstanding natural beauty, and the countryside.
364. It will also highlight the duty under section 149 of the Equality Act 2010 (elimination of discrimination against persons sharing protected characteristics under that Act). But it will also highlight other statutory duties, under non-environmental legislation, including those relating to human rights, children, crime reduction.
365. This should result in these duties being emphasised, which will be a significant benefit in relation to each of them.
366. More generally, we think that our proposals will not have any adverse impact on any of the various matters mentioned above under this heading.

Other potential impacts

367. We do not anticipate that there will be any particular effect, whether positive or negative, in relation to competition, small firms, rural proofing, or health and well-being.