WELSH GOVERNMENT DETAILED RESPONSE TO THE LAW COMMISSION'S REPORT ON PLANNING LAW IN WALES

Chapter 5 - Introductory provisions..... 1
Chapter 6 - The formulation of the development plan..... 7
Chapter 7 - The need for a planning application 10
Chapter 8 - Applications to the planning authority 14
Chapter 9 - Applications to the Welsh Ministers 26
Chapter 10 - The provision of infrastructure and other improvements 28
Chapter 11 - Appeals and other supplementary provisions..... 31
Chapter 12 - Unauthorised development..... 35
Chapter 13 - Works affecting listed buildings and conservation areas 42
Chapter 14 - Outdoor advertising 47
Chapter 15 - Protected trees and woodlands 51
Chapter 16 - Improvement, regeneration and renewal 56
Chapter 17 - High Court challenges..... 62
Chapter 18 - Miscellaneous and supplementary provisions 63

Chapter 5 - Introductory provisions

No.	Recommendation	Welsh Government Response	Comments
5-1	We recommend that a provision should be included in the Bill, to the effect that, in the exercise of any of their functions under the Code, the planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers: 1) must have regard to the development plan, so far as relevant to the exercise of that function; and 2) must exercise that function in accordance with the plan unless any other relevant considerations indicate otherwise; but that this duty should not apply to the exercise of functions relating to the formulation of the development plan, the determination of applications for certificates of lawfulness or claims for compensation, and the making of subordinate legislation.	Accept in principle	The Law Commission will be aware further discussions were held in order to clarify the intention of this recommendation and its relationship with Recommendations 5-5 and 5-6. These discussions have clarified the Law Commission's proposal through this recommendation is to combine the requirement to have regard to the development plan (so far as relevant) and to any other material considerations (currently set out in section 70(2) and various other sections of the Town and Country Planning Act (TCPA) 1990) with the presumption in favour of the development plan (currently set out in section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004) to create an overriding general development plan duty in the consolidation Bill. This duty would apply to functions undertaken by certain public bodies, with some exceptions. It was confirmed the intention of this duty is to preserve the primacy of the development plan in the decision-making process. Recommendations 5-5 and 5-6 then propose Welsh language and policies of the Welsh Government relating to the use and development of land be listed as examples of potential material considerations whilst retaining the presumption in favour of the development plan. Our response to these recommendations is provided separately below. The Welsh Government agrees in principle with the Law Commission's view that the proposed development plan duty should apply to planning authorities and the Welsh Ministers in exercising their functions under the TCPA 1990. However, we do not believe it is necessary to extend this duty to strategic planning panels (SPP). As highlighted in the Report, the proposed duty should not apply to the formulation of development plans, as the current legislation already has a scheme for the various authorities to have regard to certain matters when preparing development plans. Given an SPP's functions relate to the strategic development plan for its area, extending the proposed duty to SPPs is unnecessary because of the existing legislative provisions. The Local Government and Elections (Wales) Bill that is currently before the Senedd would remove the power to create SPPs and instead provide for functions relating to strategic development plans to be conferred on Corporate Joint Committees (CJCs) established under that Bill. For the same reasons that apply to SPPs, we do not consider that the duty should be extended to CJCs. We agree the duty should not be applied to functions relating to applications for certificates of lawfulness and claims for compensation as the decision on such applications is essentially a matter of law. The development plan is not a consideration in the determination in these types of functions. We also agree it should not apply to the making of subordinate legislation by the Welsh Ministers, so as not to prevent the Welsh Ministers from setting a national policy agenda through legislation. We note the requirement to have regard to the development plan (which attracts the presumption that decisions must be made in accordance with the plan under section 38(6) of PCPA 2004) is currently only explicitly mentioned in some provisions of the TCPA 1990. In

			practice planning authorities have regard to the development plan in exercising other functions under the TCPA 1990. However, we do not agree with the Law Commission's view that including a single general duty in the Bill is necessarily the best way to resolve this inconsistency. In our view this may not sufficiently improve the accessibility and clarity of the law and may leave open the potential for challenge as to when the duty applies. Stakeholders should be clear as to what functions the duty applies and how it affects them. The consolidation Bill presents the opportunity to clarify the law by clearly and consistently specifying the functions where the duty applies, which will provide certainty to operators of the system. The detailed exercise of establishing the functions to which the duty should apply and the precise wording to be used will require careful consideration during the drafting of the Bill. It will also be necessary to consider the relationship between this recommendation and Recommendations 14-14 and 15-2.
5-2	We recommend that: 1) the Bill should not include a definition of the term "relevant [or material] considerations" or a list of examples; and 2) the word "relevant" should be used in place of "material" in the provisions of the Bill corresponding to sections 62(4A), 70(2), 70A(1), 70A(6), 91(2), 92(6), 97, 102, 172 and 177(2) of the TCPA 1990.	Accept	The Welsh Government agrees with the Law Commission's view that the principle outlined in Stringer v Minister of Housing and Local Government continues to provide the starting point for what constitutes a planning material consideration. It clarifies that any consideration which relates to the use and development of land is capable of being a planning consideration; however, whether it is material will depend on the individual circumstances of the case. Given the broad nature of what can be classified as a material consideration and its dependence on the individual circumstances of the case, we agree it would not be helpful to try to define this term. Attempting to do so will create more problems than it resolves. For the same reasons it is also not possible to create a comprehensive list in legislation or guidance of what constitutes a material consideration. The recommendation suggests that no examples of potential material considerations should be listed in the Bill; however, Recommendations 5-5 and 5-6 propose that Welsh language and policies of the Welsh Government relating to the use and development of land be listed as examples of potential material considerations in the combined provision recommended in Recommendation 5-1. Discussions have been held with the Law Commission to provide some clarity on this potential conflict. In light of these discussions and Recommendation 5-1, the Commission have clarified that, with the exception of those material considerations identified in Recommendations 5-5 and 5-6, no further examples should be listed. We agree with this approach and our response to these recommendations is provided separately. Although examples are to be listed in the Bill, it is the principles established in case law which will continue to apply in respect of what constitutes a material consideration and the Courts will be the final arbiters of what may be regarded as a material consideration in relation to any particular application. In terms of the proposal to replace the term "material" with "relevant", we agree with the recommended approach since both terms in certain provisions of the TCPA 1990 are interpreted by the Courts to have the same meaning. We also agree that it is a more commonly understood term, which will improve the accessibility of the law to wider stakeholders that use and engage in the planning system. However, we agree with some respondents to the consultation, which is acknowledged by the Commission, that there are parts of the current TCPA 1990 where the existing term "material" takes a different meaning to the term "relevant", such as "material

			change of use". We note those provisions in which the Commission considered "relevant" can be used as an alternative term, which will inform our consideration on this matter during the preparation and drafting of the Bill.
5-3	We recommend that a provision should be included in the Bill, to the effect that, in the exercise of any of their functions under the Code, a planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers must also have regard to any other relevant considerations.	Accept	Our discussions with the Law Commission has clarified that the effect of this recommendation is not to introduce a broader duty into the consolidation Bill but to retain the existing requirement to have regard to any other relevant consideration where the development plan duty is applied to specified functions, as proposed in Recommendation 5-1. On the basis of this understanding, we agree with this recommendation. However, as mentioned in relation to Recommendation 5-1, the detailed exercise of establishing the functions to which that duty should apply will require careful consideration during the drafting of the Bill.
5-4	We recommend that 1) a provision or provisions should be included in the Historic Environment Bill to the effect that a public body exercising any function in relation to any historic asset or its setting must have regard to the desirability of preserving or enhancing the asset, its setting, and any features of special interest that it possesses; and 2) a provision should be included in the Planning Bill to the effect that planning authorities, strategic planning panels and the Welsh Ministers, when exercising any function under the Planning Code and the Historic Environment Code must have special regard to the those matters so far as relevant to the exercise of that function; 3) "public body" should include: o the Welsh Ministers; o any Minister of the Crown; o any public body (including a local authority, a national park authority, a strategic planning panel, and a joint committee); o any statutory undertaker (as defined in Part 11 of the TCPA 1990), o any person holding public office (as defined in section 85 of the Countryside and Rights of Way Act 2000); 4) "heritage assets" should include world heritage sites, scheduled monuments, listed buildings, conservation areas, registered parks and gardens, and such other categories of land as the Welsh Ministers may prescribe.	Supporting evidence for further information	We note there are distinctions in how the impact on historic assets is considered and there are variations in the weight apportioned to that consideration, depending on the class of historic asset, when assessing whether to authorise works or exercise planning functions either to a heritage asset or within its setting. The duty at section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character of conservation areas in the exercise of any function under the Planning Acts. However, the duty at section 66, in relation to listed buildings, to have (special) regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses relates only to some functions and it is applied in different terms. For other historic assets, such as scheduled monuments and registered parks and gardens, planning policy sets out the relevant considerations on the impact on these assets. World Heritage Site designation does not bring any additional statutory controls, however, planning policy accepts the need to protect the outstanding universal value of such sites, in line with the World Heritage Convention. Part (1) of this recommendation proposes to introduce a wide and consistent duty in respect of functions exercised by public bodies. We agree in principle with Part (1) of this recommendation insofar that further clarity and consistency would be desirable as to how the impacts on historic assets are assessed, and the level of regard which must be given to the impacts when making decisions. However, further detailed research and evidence gathering would be required to understand what such a duty would mean in practice, its impact on the way that public bodies carry out their functions and the extent of such a duty. Further consideration of the unintended consequences of introducing such a duty would also be required. This work could reasonably be undertaken in conjunction with the policy development required to support a future programme of reform to the legislation for the historic environment. Paragraph 5.100 of the Law Commission's report directly links Part (2) of this recommendation with Recommendations 13-1A and 13-1B. As consideration of these recommendations has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further as part of the review.

5-5	We recommend that a provision should be included in the Bill to the effect that: 1) the relevant considerations, to which a planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers must have regard (in accordance with Recommendation 5-3) when exercising any function under the Code – other than those relating to the determination of applications for certificates, or claims for compensation – should include the likely effect, if any, of the exercise of that function on the use of the Welsh language, so far as that is relevant to the exercise of that function; but 2) the duty to consider the effect of the exercise of a function on the use of the Welsh language is not to affect: o whether regard is to be had to any other consideration when exercising that function or o the weight to be given to any such consideration in the exercise of that function. Such a provision would replace section 70(2)(aa) of the TCPA 1990 and sections 60B(2), 60I(8), 62(6A)of the PCPA 2004.	Accept	It has been clarified with the Law Commission that Recommendations 5-5 (Welsh language) and 5-6 (national policy) are exceptions to Recommendation 5-2 (1), that no examples of material considerations should be listed in the Bill. As explained in response to Recommendation 5-1, we understand the Law Commission's recommendation is that the Welsh language should be listed as an example of a potential material consideration where there is duty to have regard to the development plan and other material considerations, whilst retaining the presumption in favour of the development plan. The Welsh Government agrees with this, which reaffirms the Welsh language as a possible material consideration in the decision-making process, qualified by section 31(4)(b) of the PWA 2015, reflecting the current law. We agree that the Welsh language as a potential material consideration is inconsistently identified. The Welsh language is currently only specified in section 70 and not in any other provisions where the development plan duty is specified, which only makes reference to "*having regard to the development plan and to any other material considerations*". As mentioned in relation to Recommendation 5-1, the detailed exercise of establishing the functions to which that duty should apply and the precise wording to be used will require careful consideration during the drafting of the Bill. The published recommendation suggests such an approach would replace the need for the Welsh language requirements relating to the formulation of development plans under the PCPA 2004 (section 60B(2), section 60I(8) and section 62(6A)). Our discussions with the Law Commission about this recommendation and its relationship with Recommendation 5-1 have clarified the need to retain the requirements in sections 60B(2), 60I(8) and 62(6A) of the PCPA 2004. As stated in Recommendation 5-1, that recommendation is not to apply to the formulation of development plans. Therefore, there is a need to retain the listed sections of the PCPA 2004 to ensure that an assessment of the likely effects on the use of the Welsh Language form an integral part of the sustainability appraisal informing the preparation of development plans (i.e. NDF, SDPs and LDPs).
5-6	We recommend that a provision should be included in the Bill, to the effect that: 1) the relevant considerations, to which a planning authority, a strategic planning panel or the Welsh Ministers must have regard (in accordance with Recommendation 5-4) when exercising any function under the Code – other than those relating to the determination of applications for certificates, or claims for compensation – should include the policies of the Welsh Government relating to the use and development of land, so far as they are relevant to the exercise of that function; but 2) the duty to consider Welsh Government policies is not to affect: o whether regard is to be had to any other consideration when exercising that function, or o the weight to be given to any such consideration in the exercise of that function.	Accept	The Welsh Government notes the significant support for the recommendation from respondents to the consultation. Similar to Recommendation 5-5 relating to the Welsh language, we understand the Law Commission's recommendation is to list policies of the Welsh Government relating to the use and development of land as an example of a potential material consideration, where there is duty to have regard to the development plan and other material considerations whilst retaining the presumption in favour of the development plan. With national planning policy playing a fundamental role in decision making where there is no (or an up to date) local development plan in place, we agree with the comments of the RTPI Cymru, Planning Officers Society Wales and several planning authorities that this recommendation will bring into legislation established practice and case law. In effect the recommendation will provide clarification of the existing legal position. Whilst other areas of Welsh Government policy may be relevant in a particular case, we agree the provision in the Bill should be confined to those relating to the use and development of land. As mentioned in relation to Recommendation 5-1 the detailed exercise of establishing the functions to which that duty should apply and the precise wording to be used will require careful consideration during the drafting of the Bill.

5-7	We recommend that it is not necessary for the Bill to contain a provision, equivalent to section 2 of the P(W)A 2015, to the effect that any public body exercising some of the functions under the Code must do so as part of its duty under the Well-being of Future Generations (Wales) Act 2015 to carry out sustainable development.	Reject	The planning system is central to the achievement of sustainable development. Section 2 of the Planning (Wales) Act (P(W)A) 2015 sets out a statutory purpose for planning functions relating to development planning and applications for planning permission in Wales that confirms and clarifies the requirement to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015 and complements the aims and objectives of that Act. As the achievement of sustainable development forms an important part of the planning system, section 2 of the P(W)A 2015 should be retained, as it serves as an important confirmation to those operating, using and wishing to engage in the system. In the event this provision is retained, we note the Law Commission's view that it should be expanded to apply to any function undertaken by a public body under the Bill. We agree in principle with extending this provision; however, the extent to which it is can be extended will be considered in detail during the drafting of the consolidation Bill to ensure the current legal position in preserved.
5-8	We recommend that reference to duties in non-planning legislation that may be relevant to the exercise of functions under the Code should be included at appropriate points within Ministerial guidance, and be made available on the Welsh Government and Planning Portal websites.	Accept in principle	With a number of pieces of non-planning legislation imposing duties that are directly relevant to the exercise of functions under the principal planning acts, the Welsh Government agrees it would be useful for those operating, using and wishing to engage in the planning system if references to the duties are set out in guidance. We note that some references are currently included in Planning Policy Wales, however this is not a comprehensive list. We agree these references will serve as a useful reminder to decision makers of the wider duties they must consider when performing their planning functions. Consideration will be given as to the appropriate location for these references and whether they should be located together or included at appropriate points in national guidance.
5-9	We recommend that section 53 of the Coal Industry Act 1994 (environmental duties in connection with planning) should be repealed.	Reject	The Welsh Government agrees with the Law Commission that section 53 of the Coal Industry Act 1994 should not be reproduced in the Bill. However, we disagree with the recommendation to repeal the section. The Coal Industry Act 1994 provided for the reorganisation of the coal industry, including the establishment of the Coal Authority. As such, most of its provisions – including section 53 – apply throughout Great Britain. It does appear that section 53 duplicates some of the requirements that would generally apply in relation to decisions under town and country planning legislation. However, the recommendation would involve amending section 53 to provide that it does not apply to Wales, which would be likely to give a misleading impression about the position in Wales by suggesting that the matters mentioned in the section were relevant only in England and Scotland. We therefore consider that, on balance, it would be more helpful to retain section 53.
5-10	In the light of the previous proposals in this Chapter, we do not recommend that the Bill should contain a provision explaining the purpose of the planning system in Wales.	Reject	A statutory purpose for the planning system in Wales is already included in planning legislation via section 2 of the Planning (Wales) Act 2015 (PWA 2015). It confirms and clarifies the requirement to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015 and complements the aims and objectives of that Act. As highlighted in our response to Recommendation 5-7, we propose to carry forward this provision into the consolidation Bill as it serves as an important confirmation to those operating, using and wishing to engage in the system.

5-11	We recommend that persons appointed by the Welsh Ministers for the purpose of determining appeals, conducting inquiries and other similar functions should be referred to in the Planning Bill as “inspectors”.	Accept in principle	The Welsh Government notes the arguments in favour of changing the terminology to a more understandable term in order to improve the accessibility of the legislation and the recommended alternative term. However, as the Welsh Ministers have recently committed to establishing a new Wales-only appeals body, our consideration of an alternative term to be used in the Bill will need to be informed by the arrangements being developed for the new body. This will enable the legislation to more accurately reflect the new arrangements, whilst also ensuring flexibility provided by the current legal position is maintained to enable the Welsh Ministers to appoint any independent person to undertake certain function on their behalf.
5-12	We recommend that the Bill should not include the provisions currently in Part 1 of the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as local planning authorities.	Accept	The Welsh Government agrees with the recommendation to dis-apply for the purpose of Wales the existing powers in the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as the planning authority for their respective areas, when established under separate legislation. The purpose of these area based bodies are to promote the regeneration or improvement of the areas in which they cover. Given the important role existing planning authorities play in place making, it is our view these bodies should work in partnership with them to ensure sustainable and vibrant places are created for our communities. Removing the ability for such bodies to be planning authorities in their own right will assist in creating this partnership approach. Recommendations 16-8, 16-10 and 16-11 suggest legislation relating to enterprise zone authorities, urban development corporations and housing actions trusts should be dis-applied to Wales in their entirety. Responses to these recommendations have been considered separately.
5-13	We recommend that the term “planning authority” should be used in the Planning Code in place of the term “local planning authority” and “minerals planning authority” in existing legislation.	Accept	The Welsh Government agrees with the recommendation, as the proposed simplification modernises the legislation to more accurately reflect the unitary system of local government in Wales. As suggested by some respondents, it could assist with a potential cause of confusion by some that a planning authority may not necessarily be the ‘local council’, as it could be the national park authority in some areas or a joint planning board if established under planning legislation. We also agree with the Law Commission’s view that the phrase ‘mineral planning authority’ is also no longer required given that the mineral planning authority is the planning authority in Wales. Using the proposed term will not change the substance of the legislation but it will provide clarity and improve accessibility.

Chapter 6 - The formulation of the development plan

No.	Recommendation	Welsh Government Response	Comments
6-1	We recommend that Part 6 of the PCPA 2004 (development plans), as amended by the P(W)A 2015, should be restated in the Bill, subject to any necessary amendments relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter.	Accept	A plan led planning system is vital to the coordination of sustainable places and communities. Given the importance of development plans in the planning system, the Welsh Government agrees that Part 6 of the Planning and Compulsory Purchase Act (PCPA) 2004 (development plans), as amended by the Planning (Wales) Act 2015 (P(W)A 2015), should be incorporated into the consolidation Bill. This will improve accessibility of the legislation to users and operators of the system, as these and other important provisions underpinning the planning system will be located in a single Bill.
6-2	We recommend that: 1) the provisions currently in the Planning and Energy Act 2008 should be repealed; and that 2) consideration should be given in due course to: o including equivalent provisions in guidance; and o making appropriate amendments to the Building Regulations.	Accept	The Welsh Government agrees the provisions in the Planning and Energy Act 2008 (the Act) should be repealed in Wales, as these specific considerations in the preparation of a Local Development Plan (LDP) are already identified in national policy. Planning Policy Wales (PPW) already sets out the Welsh Government's expectations in relation to planning authorities (PAs): • setting policies for development to use energy from local renewable and low carbon sources; • including policies to set energy efficiency standards to exceed the requirements in building regulations for strategic development sites. Therefore, there is little difference in policy effect between what it currently stated in this Act and in PPW. The Act only encourages the inclusions of such policies, rather than imposing any stricter obligations on PAs. In comparison legislation provides that a PA must have regard to current national policies in preparing an LDP. Therefore, in preparing an LDP a PA must have regard to the policies in PPW. In our view this places a greater requirement than the Act on PAs by requiring them to having regard to these matters in preparing their LDPs. With little difference in the policy effect of what is stated in the Act and in PPW, it is our view that the recommendation to include equivalent provisions in guidance has already been fulfilled as provision has been included in national policy. The Law Commission recommends that consideration should be given in due course to making appropriate amendments to the Building Regulations. Part L of the Building Regulations, which covers the energy efficiency of both domestic and non-domestic buildings, is currently under review. Some proposals to increase standards have already been the subject of public consultation, with further proposals to be the subject of consultation shortly. As mentioned above, PPW sets out the Welsh Government's expectations for local policies to be included that set energy efficiency standards exceeding the requirements in building regulations for strategic development sites. Although PPW provides this approach, it must only be pursued where there is clear evidence to do so.

6-3	We recommend that the requirement in the PCPA 2004 as to the sustainability appraisal of development plans should be carried forward into the Bill, but that: 1) the guidance on the implementation of that requirement be drafted so as to minimise the burden in practice; and 2) the position as to that requirement be reviewed in the light of any forthcoming review of the SEA Regulations.	Accept	The Welsh Government agrees with the recommendation that the Sustainability Appraisal (SA) requirements in the PCPA 2004 need to be retained and included in the consolidation Bill. Their retention is consistent with the Well-being of Future Generations (Wales) Act 2015, as the scope of a Strategic Environmental Assessment (SEA) is limited to environmental effects of plans, whereas the remit of a Suitability Appraisal (SA) is broader and covers the effects of social, economic and cultural well-being. Although not to be included in the consolidation Bill, it is also important to retain the requirements to prepare SEAs as they are required for a wider range of plans and programmes than SAs in order to ensure that environmental effects of different types of plans are fully considered. Welsh Government development plan guidance is clear that the requirements of the SEA Regulations are best incorporated into an SA to avoid unnecessary repetition. Edition 3 of the Development Plans Manual has been recently published (March 2020), which contains new guidance on integrating strategic environmental assessments (SEA) into sustainability appraisals (SA) (chapter 4). The inclusion of this additional guidance in the Manual result in the completion of subsections 1 of this recommendation. In terms of reviewing the SEA Regulations, there are currently no plans to do so. However, the relationship between an SEA and SA is an issue that will be considered in any future review of these assessments.
6-4	We recommend that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill.	Accept	The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 make provision in relation to local development plans. However, they do not set a detailed procedure for the examination of local development plans (LDPs), which is in contrast to what is suggested in the Law Commission's Report. Detailed procedural aspects of LDP examinations are set by the Planning Inspectorate Wales in which they follow the spirit of rules governing other procedures. This is to provide flexibility in administrating the examination process to accommodate the needs of all parties involved whilst ensuring everyone is dealt with fairly during the process. Taking this approach has meant section 114 of the PCPA 2004 has not been required as detailed procedural rules have not been made. However, it is our view that a provision should be retained in the consolidation Bill in order to preserve our ability to prescribe the procedure in relation to examinations under provisions currently in Part 6 of the PCPA 2004 in secondary legislation should it become necessary to do so in the future. Section 114 brings LDP examinations within the scope of powers to make procedural rules in the Tribunals and Inquiries Act 1992, but the corresponding powers for other planning inquiries are now found in the planning legislation itself. We propose bringing examinations under Part 6 of the PCPA 2004 within the powers in planning legislation as part of the consolidation exercise (such as section 323A of the Town and Country Planning Act 1990 (TCPA 1990)), which gives the Welsh Ministers power to prescribe the procedures for certain proceedings including planning appeals in regulations. This approach means it will be unnecessary to restate section 114.

6-5	We recommend that Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act should be restated in the Planning Bill in broadly their present form.	Accept in principle	The Welsh Government agrees with the principle of restating Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act. However, during the course of the detailed drafting of the Bill, consideration will be given to whether all of the provisions that apply to Wales should be moved to the consolidation Bill, due to the various connections to other legislative regimes.

Chapter 7 - The need for a planning application

No.	Recommendation	Welsh Government Response	Comments
7-1	We recommend that the power of the Welsh Ministers to remove certain categories of demolition from the scope of development, currently in TCPA 1990, section 55(4)(g), should not be restated in the new Bill, but that the same result should be achieved by using the GPDO.	Accept	The Welsh Government understands that this recommendation relates to section 55(2)(g) of the Town and Country Planning Act 1990 (TCPA 1990). The Welsh Government agrees the law regarding demolition is extremely confusing to both professionals and the public following the partial quashing of the Town and Country Planning (Demolition - Description of Buildings) Direction 1995 by the Court of Appeal (Save Britain's Heritage v the Secretary of the State for Communities & Local Government [2011] EWCA Civ 334). In May 2018 the Welsh Government consulted upon cancelling the existing demolition direction and providing the permitted development rights for specified categories of demolition as part of the future amendments to the Town and Country Planning (General Permitted Development) Order (GPDO) 1995. By not restating the direction power contained in section 55(2)(g) along with the amendments to the GPDO it will ensure the planning system treats any demolition of a building in a consistent procedural manner. This approach will make the law more accessible and provide much needed clarity. It will also give planning authorities (PAs) the ability to impose Article 4 Directions to withdraw permitted development rights locally when necessary. The proposal was supported by respondents to our consultation, and we note this recommendation has also received significant support from respondents to the Law Commission consultation.
7-2	We recommend that the extent of minor building operations that are not excluded from the definition of development by TCPA 1990, s 55(2)(a), currently in the proviso to s 55(2)(a) and in s 55(2A) and (2B), should be clarified with a single provision to the effect that the carrying out of any works to increase the internal floor space of a building, whether underground or otherwise, is development.	Accept	The Welsh Government notes the overwhelming support by respondents to this recommendation and agrees the extent of minor building operations captured by the definition of development, as set out in section 55 (2)(a), (2A) an (2B) and Article 2A of Town and Country Planning (Development Management) Procedure (Wales) Order 2012 (DMPWO) should be simplified. We agree the reference to *"works for making good war damage"* is no longer required. We also agree with the proposed approach of including works to increase the internal floor space of a building in the definition of development, but providing for cases in which such works should be permitted development in the GPDO. This is a logical approach to simplifying the matter of when internal alterations to a building constitute development. This will provide greater clarity to the law while providing flexibility for future changes - should such changes be required. In making this change, we will be seeking to maintain the current position that a planning application is only required for works affecting the interior of a building, where those works create more space underground, or have the effect of increasing the floor space of a building by more than 200 square metres in circumstances where the building is used for the retail sale of goods, other than hot food. This would mean providing permitted development rights in the

			GPDO for works to increase floor space of a building other than where the works have the effect of: - providing additional space in the building underground, or - increasing the floor space by more than 200sq m in circumstances where the building is used for the retail sale of goods, other than hot food. Article 2A of the DMPWO would also no longer be of any effect and would be removed.
7-3	We recommend that the Bill should not include a definition of "engineering operations".	Accept	The Welsh Government agrees the consolidation Bill should not attempt to provide an exhaustive definition of engineering operations. Whilst a definition may provide some clarity, the types of development that currently could constitute an engineering operation is extremely broad and any attempt to prescribe this in statute is likely to narrow the scope of works that could potentially be captured within the definition of development. It is clear from the report and the responses received to the consultation that including a definition in the Bill is likely to create more problems than it would resolve.
7-4	We recommend that the Planning Bill should provide for the approval of use classes regulations by the negative resolution procedure.	Accept	As the Town and Country Planning (Use Classes) Order (which is made under powers in section 55(2)(f) of the TPCA 1990) is currently not the subject of a Senedd scrutiny procedure, the Welsh Government agrees it would be appropriate for this statutory instrument to be the subject of the Senedd's negative resolution procedure. This will provide an appropriate level of Senedd scrutiny consistent with other similar regulations and orders currently made under the TCPA 1990, such as the GPDO.
7-5	We recommend that section 55(3)(a) of the TCPA 1990 should be clarified by providing that the use as one or more dwellings of any building previously used as a different number of dwellings is a material change in the use of the building and of each part of it that is so used.	Accept	The Welsh Government agrees the Law Commission that it would remove uncertainty to make it plain that any change in the number of residential units in a building, either up or down, should be considered to be a material change in the use of the building, and thus development. The proposed amendment to section 55(3)(a) therefore provides greater clarity of the law. Notwithstanding this, it is our view a decrease in residential units, in most circumstances, reduces the planning impacts and should therefore be permitted. Consequently, we will maintain the current position that a planning application would not be required for such changes. This will be achieved by making appropriate consequential amendments to the GPDO so that any decrease in the number of residential units in a building is permitted development. However, where such a change could give rise to detrimental planning impacts, such as where there are pressures on existing housing stock, PAs would have the ability to use Article 4 Directions to remove permitted development rights and apply local development plan policies when determining planning applications for such changes.
7-6	We recommend that section 55(2)(d) to (f) should be clarified by providing that the following changes of use should be taken for the purposes of this Act not to involve development of the land: 1) the change of use of land within the curtilage of a dwelling to use for any purpose incidental to the enjoyment of the dwelling as such; 2) the change of use of any land to use for the purposes of agriculture or forestry (including afforestation) and the	Accept	The Welsh Government agrees this is a purely technical change that will clarify the existing position of the law regarding change of use. On this basis the recommendation is supported. However, we note the comments of some respondents to the consultation regarding the proposed wording of the amended provision, particularly in respect of (1). The precise wording of the provision will require careful consideration during the drafting of the consolidation Bill.

	change of use for any of those purposes of any building occupied together with land so used; 3) in the case of buildings or other land which are used for a use within any class specified in regulations made by the Welsh Ministers under this section, the change of use of the buildings or other land or, subject to the provisions of the regulations, of any part of the buildings or the other land, from that use to any other use within the same class.		
7-7	We recommend that section 58 of the TCPA 1990 (ways in which planning permission may be granted) should not be restated in the new Planning Bill in its present form, but that a comprehensive list, regularly updated as required, should be included in guidance.	Accept	The Welsh Government agrees that section 58 is unclear in its purpose, does not add anything of substance, and is misleading by being a non-exhaustive list. Therefore, it should not be restated in the consolidation Bill in its present form. As the Law Commission acknowledges, the consolidation Bill may include overviews and "signpost" provisions. These provisions do not have any substantive effect, but are intended to help the reader navigate the legislation. In drafting the consolidation Bill, we will consider whether overviews and signposts should be included to improve the accessibility of the legislation. We note the Commission's view that a comprehensive list of the ways in which planning permission can be granted might be best located in the Development Management Manual. We will consider this as part of a future programme of work to update the Development Management Manual.
7-8	We recommend that section 61 of the TCPA 1990 (largely relating to the applicability of pre-1947 legislation) should not be restated in the new Planning Bill.	Accept	We are not aware of provisions in development orders made under the TCPA 1990 that rely on the subsections of section 61(2) and (3). The Welsh Government therefore agrees that section 61(2) and (3) has no practical utility or effect and should not therefore be restated in the consolidation Bill. As noted by the Law Commission, section 61(1) is no longer required as it is duplicated by section 333(4B) of the TCPA 1990.
7-9	We recommend that sections 88 and 89 of the TCPA (planning permission granted by enterprise zone scheme) should not be restated in the new Planning Bill.	Accept	Section 88 and section 89 of the TCPA 1990 grant planning permission for development described in a scheme designating an enterprise zone. Enterprise zones schemes are approved by Orders made under Schedule 32 to the Local Government, Planning and Land Act 1980 (the LGPLA). Local Development Orders, which were introduced in Wales in 2012 by the insertion of sections 61A-61D of, and Schedule 4A to, the TCPA 1990, enable PAs to achieve a similar outcome. Since the relevant provisions of the LGPLA came into force, four Orders designating enterprise zones in Wales have been made, each instigated by a single Local Authority and designated within their entire area. Were those enterprise zones to be designated today, to the extent that planning permission was granted by section 88 and 89, PAs could achieve a similar outcome of granting planning permission through a Local Development Order. Therefore section 88 and 89 of the TCPA 1990 would not be required. In our detailed response to Recommendation 16-8, we agree to the dis-application of provisions in the LGPLA and the TCPA 1990, relating to enterprise zones, for the purposes of Wales. It follows that section 88 and section 89 need not be restated in the new Bill.

7-10	We recommend that sections 82 to 87 of and Schedule 7 to the TCPA (simplified planning zones) should not be restated in the new Planning Bill.	Accept	The Welsh Government agrees Local Development Orders provide a simpler and more appropriate mechanism for reducing the planning requirements for developers to encourage development in a specific area in comparison to simplified planning zones. Local Development Orders achieve the same effect as simplified planning zones by establishing permitted development rights for specified types of development in defined locations with a more simplified procedure for their establishment. On this basis we agree that the provisions relating to simplified planning zones should not be restated in the consolidation Bill.
7-11	We recommend that the provisions relating to time limits and certificates of lawfulness, currently included in TCPA 1990, sections 171B and 191 to 196, should be included in the new Planning Bill alongside the other provisions relating to the need for planning permission. They should be drafted along the lines of TCPA 1990, section 64(1) (including a reference to the need for a planning application to be submitted, in the light of general and local development orders, but not to enterprise zone or simplified planning zone schemes).	Accept in principle	The Welsh Government agrees anyone should be able to ascertain whether an operation or change of use requires planning permission. The existing certificate procedure provides for this and must therefore be retained in the consolidation Bill. We note the support from respondents to reframing the provisions so that the starting point is to define whether or not the development is a “lawful operation” and “lawful use”, rather than as currently drafted whether or not it is exempt from enforcement action. Whilst we support this approach in principle, further consideration will be given when drafting the Bill to ensure there are no unintended consequences as a result of reframing the provisions in this manner. We will also take the opportunity to improve the accessibility of the law when structuring the consolidation Bill, ensuring these provisions are appropriately located in the relevant part of the Bill. Our position in relation to enterprise zones and simplified planning zones are set out in our responses to Recommendations 7-9, 7-10 and 16-8.
7-12	We recommend that the Bill should not include a provision to the effect that an application for planning permission should be assumed to include an application for a CLOPUD or a CLEUD; but that Welsh Government guidance should remind planning authorities to consider, when validating applications, whether planning permission is actually required for the proposal in question and, if it is, whether it is granted by a development order.	Accept	The Welsh Government notes the revised Law Commission position on this matter having considered the comments received from respondents to the consultation proposal. We agree with the Law Commission’s revised position that such a provision should not be included in the Bill. The issues to be determined and evidence required to support an application for a certificate of lawfulness are very different from those for a planning application. Whilst the two applications may overlap, they will be quite distinct – the determination of a certificate is based on factual considerations of whether the development in question complies with the law, whilst the determination of a planning application is based on considerations against planning policies. In practice, the starting point for PAs when considering an application for planning permission will be whether the proposal is development, and if it is development, whether it is granted by the GPDO. If planning permission is not required, authorities advise the applicant in writing and invite an application for a certificate of lawfulness. As suggested in the Report, we will provide appropriate guidance on the approach to be taken on this matter in a future update to the Development Management Manual.

Chapter 8 - Applications to the planning authority

No.	Recommendation	Welsh Government Response	Comments
8-1	We recommend that: 1) the provisions of the TCPA 1990 relating to outline planning permission should be retained in the Bill, but made clearer, and brought into the same part of the Act as those relating to detailed planning permission, currently in sections 62 and 70; and 2) when the DMP(W)O is next updated, consideration should be given to whether additional categories of matters should be added to the list of those that are currently capable of being reserved for subsequent approval.	Reject	The Welsh Government acknowledges the issues identified in the consultation with the current outline procedure. We agree with the Law Commission's assessment in the consultation document that there is no longer any obvious distinction in principle between the grant of full permission, followed by the approval of matters required by one or more conditions, and the grant of outline permission followed by the approval of the reserved matters. We agree that, in either case, the principle of the proposed development is approved by the initial grant of permission, but it may not lawfully proceed until the details have all been approved. The level of information required for an outline planning application is very similar to that required for a full application, particularly as a result of article 3(2) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMP(W)O). We acknowledge the split nature of the responses to this consultation question. Notwithstanding this, at this present time, the Welsh Government rejects the recommendation which does not propose any meaningful reform of the outline planning permission process. We remain of the view that the difference between outline and full planning permission has narrowed to a point where the value of an outline application must be reconsidered. To that extent, we will give further consideration to the value of outline planning permission in its current form as part of a future review. This includes consideration of whether permission in principle, as introduced in England by the Housing and Planning Act 2016, should be introduced in Wales. Any proposed changes will require further engagement with stakeholders, including a public consultation. These changes would also constitute a policy change which would need a future reform Bill to be delivered. The evidence provided by the Law Commission, and the comments provided by respondents to the consultation, will also be considered as part of the review to inform that Bill. However, with a Planning Consolidation Bill likely to be pursued in advance of this future programme of work and potential need for a reform Bill, the existing provisions relating to outline planning permission in the Town and Country Planning Act 1990 (TCPA 1990) will be included as part of the consolidation exercise. In terms of how they are presented in the consolidation Bill, we agree with the Law Commission's view that the law would be clearer and more accessible if the provisions relating to outline planning permission were located closer to those provisions relating to the making and determination of applications for detailed planning permission – to reflect the approach we have taken in the DMP(W)O. As we propose to undertake a comprehensive review of outline planning permission, we do not intend to undertake incremental changes to this element of the system. Therefore, we will not be considering making changes to the current categories of matters capable of being reserved for subsequent approval, as proposed in Recommendation 8-1(2), in isolation of this review.

8-2	We recommend that section 327A of the TCPA 1990 – providing that planning authorities must not entertain applications that do not comply with procedural requirements – should not be restated in the Bill.	Reject	The Welsh Government does not agree with this recommendation. Section 327A makes it clear that an application must not be entertained by a Planning Authority (PA) if it does not meet the requirements in the TCPA 1990 or DMP(W)O as to the form or manner in which it must be made and the form or content of supporting material to accompany it. We believe this duty is vital to uphold the validation process, in order to maintain the quality and submission of a complete application to provide PAs with sufficient information to determine them within the statutory timescales. Section 327A ensures a consistent approach to validation nationally so the same level of information is required for a valid application, regardless of where that application is submitted. We note the concern that section 327A could be used as a route of third party challenge. However we also note the court has a discretion as to remedy. Further, we are concerned about the consequences of not restating this section in the consolidation Bill. Not restating the provision will introduce discretion for PAs, and ultimately uncertainty, into the validation process to the detriment of applicants. Section 327A also currently provides an important link with the non-validation notices and appeals system. Section 62ZA requires a PA to give formal notice to an applicant where they consider that the application submitted to them does not comply with a "validation requirement" imposed by section 62 of the TCPA 1990. Section 62ZA(7) makes a direct link to section 327A in the definition of "validation requirement". Section 62ZB provides applicants with a right of appeal to the Welsh Ministers where the PA has served notice under section 62ZA that an application is considered invalid. We believe the validation process and appeals system works well in its current form. Further, the Welsh Government does not agree with the Law Commission's interpretation of the relationship between section 62, section 62ZA and section 327A and their combined policy effect. They do not serve as a form of informal early warning mechanism to draw mistakes and omissions to the attention of applicants. They provide a mechanism that requires the PA to issue a notice (in some instances after a period of negotiation with the applicant) that sets out their formal and final decision that the application submitted to them does not comply with a "validation requirement". This position is reflected in the Development Management Manual (Revision 2, May 2017), which states in the context of appeals against a notice of non-validation that *"…the notice will be the only opportunity for the LPA to state their case as to why they consider the application to be invalid"*. This emphasises the importance of the notice being the PA's formal and final decision that will then be considered as the PA's representations in any appeal pursued by the applicant.
8-3	We recommend that section 65(5) of the TCPA 1990 (ownership certificates) should be restated in the Bill in its present form.	Accept	The Welsh Government notes that the provisional proposal in the Consultation Paper has been revised in light of comments received from respondents, in particular those made by the Planning Inspectorate Wales. The Welsh Government recognises the importance of the notification and certification requirements under section 65. Section 65(5) makes it clear that a PA must not entertain an application that fails to meet these requirements. We agree with the respondents to the consultation who commented the removal of section 65(5) could impact upon the participation of landowners or long-term occupiers in the application process. Restating section 65(5) maintains the existing policy position.

			We note the comments made by some respondents concerning the confusion that certificates can cause for applicants and the suggested improvements that could be made to the application form in order to provide greater clarity. We will consider these suggested improvements as part of our future programme of work supporting the consolidation Bill.
8-4	We recommend that the requirements of section 65(2) of the TCPA 1990 and secondary legislation made under that provision as to the notification of planning applications to agricultural tenants and the notification of minerals applications be redrafted to make clear the limited circumstances in which they apply.	Accept in principle	The Welsh Government agrees in principle with this recommendation. We acknowledge the agricultural holdings certificate in particular can be a source of confusion for applicants, which is clearly evidenced by the comments received from respondents to the consultation and the comprehensive support for the recommendation. This confusion could lead to the submission of invalid applications and cause delays to their validation and subsequent determination. We will need to consider in more detail whether primary legislation is required to deal with the issues raised, or whether amendments could be made to the secondary legislation or prescribed forms and guidance.
8-5	We recommend that section 70A of the TCPA 1990 (power to decline similar applications) should be restated in the Bill in the form in which it applies in England following amendment by the PCPA 2004 and the Planning Act 2008, and as amended by the P(W)A 2015.	Accept in principle	The Welsh Government agrees section 70A should be restated in the consolidation Bill. However, whilst we accept the principle of the amendment inserted by the PCPA 2004 to allow PAs to decline to determine an application where two previous applications have been refused (but not appealed), i.e. to prevent an applicant seeking to secure permission by a process of attrition, we do not wish to commence this amendment as the provision could conflict with the concept of twin tracking, the retention of which remains the policy position of the Welsh Government. Twin Tracking, i.e. the submission of a second application at the same time as a similar application or when a similar application is under consideration, in our view can expedite the planning process where there is more than one development option, as well as securing another avenue for mediation to keep dialogue open when discussing potential alternatives. If two simultaneous applications are refused by a PA, section 70A(4) (in force in England as inserted by the PCPA 2004) could prevent the submission of any further applications. As twin tracking is to remain in Wales, which we note is an approach also supported by the Law Commission in the supporting text to Recommendation 8-6, we will seek to take the principle of the 2004 amendment forward but ensure the developer can proceed through the consent process twice, where one of these times is a twin tracked proposal (i.e. 3 applications in total) which the 2004 amendment does not accommodate. In order to pursue our divergence from the 2004 amendment, this is likely to constitute a policy change that would need to be included in a future reform Bill. Furthermore, we do not intend to restate the provision in the Bill in the form as amended by the Planning Act 2008. The Planning Act 2008 amended section 70A to allow a PA to decline to determine an application if it is the same or substantially the same as a deemed application arising from an enforcement appeal which has been refused. We consider the powers in section 70C of the TCPA 1990, which applies in Wales provide planning authorities with sufficient powers in cases where an enforcement notice has been issued. Therefore, in summary, we will seek to restate section 70A in an amended form that takes forward the principle of the 2004 amendment in respect of multiple applications, adapted for the retention of twin-tracking in Wales. The 2008 amendment regarding deemed applications will not be taken forward.

8-6	We recommend that section 78A of the TCPA 1990, enabling a period of dual jurisdiction between the planning authorities and the Planning Inspectorate, should be restated in the Bill, but not section 70B (which effectively prevents twin-tracking).	Accept	The Welsh Government agrees with the Law Commission's view that section 78A should be restated in the consolidation Bill. We also agree section 70B of the TCPA 1990 should not be introduced in Wales and therefore should not be included in the Bill. As stated in our response to Recommendation 8-5, the retention of twin-tracking remains the policy position of the Welsh Government. Twin tracking can expedite the planning process where there is more than one development option, as well as keeping dialogue open when discussing potential alternatives. As section 70B was designed to prevent the twin-tracking process we do not wish to introduce this provision in Wales
8-7	We recommend that the Bill should include a provision requiring each planning authority to prepare a statement specifying those categories of people and organisations within the community (including community and town councils) whom it will seek to involve in the determination of planning applications.	Supporting evidence for further consideration	The Welsh Government agrees with the principle of increasing public participation in the planning application process, as it is vital that our communities are engaged in order to shape the places in which they live. However, we believe a more fundamental review of local engagement in the planning system is required. This is why the Welsh Government will be undertaking a wholesale and wide review of engagement throughout the planning system, including options for modernising the publicity process. We are currently in the process of scoping this work, which will include stakeholder engagement to inform the review. Any change to primary legislation needed as a result of its conclusions will provide an evidence base to inform a future reform Bill.
8-8	We recommend that no amendment should be made to the DMP(W)O in relation to representations relating to a planning application that are received after the end of the 21-day consultation period; any obligation to take into account later representations should remain, as at present, a matter of good practice.	Accept	The Welsh Government agrees with respondents to the consultation who expressed concerns about potential misuse by those seeking to obstruct and delay decision-making by a PA if a requirement were to be placed in statute that representations received after the end of the 21-day consultation period, but before the date of the decision, should be taken into account. As a matter of good practice PAs should take into account any representations received after the publicity period but before the application is formally determined. Paragraph 8.2.9 of the Development Management Manual (Revision 2, May 2017) makes this clear by advising that any relevant comments received after the publicity period should also be taken into consideration, if the application has not been determined. Therefore, we agree with the recommendation that the current position and practice in relation to this matter should be maintained.
8-9	We recommend that the term "condition" should be defined so as to include "limitation".	Accept in principle	The Welsh Government agrees with the principle of removing the distinction between conditions and limitations, which we note received comprehensive support by respondents to the consultation. We accept and agree the distinction between 'limitation' and 'condition' is confusing and creates an unnecessary complication to the law. Integrating the terms will provide clarity of the law and consistency throughout the Bill. The precise wording to be used in the Bill will require careful consideration in the context of each provision and in the context of the legislation as a whole, particularly in those cases where provisions currently refer only to "conditions" or only to "limitations". That will include considering whether defining "condition" to include "limitation" is the most helpful approach.

8-10	We recommend that: 1) the Bill should contain a general power for planning authorities to impose such conditions [or limitations] as they see fit, provided that they are: o necessary to make the development acceptable in planning terms, o relevant to the development and to planning considerations generally, o sufficiently precise to be capable of being complied with and enforced, and o reasonable in all other respects; 2) applicants should be afforded a right to see draft conditions proposed by a planning authority determining an application, with a limited period in which to respond, with a duty on the authority to have regard to any comments made.	Accept	We agree it would be helpful for the Bill to contain provision relating to the power to impose conditions in terms similar to those used in the judgement in *Newbury* and in existing guidance. This will improve accessibility and understanding of the law. The precise wording to be used in the Bill will require careful consideration. We also agree with the Law Commission's view that an enabling power should also be introduced so that applicants can be given a right to see draft conditions proposed by a PA determining an application. Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management advises local authorities to look favourably upon requests to view draft conditions from applicants. Setting this requirement in statute will ensure a consistent approach across Wales and potentially reducing the inclusion of poorly drafted conditions in decision notices. While the Law Commission have outlined a potential procedure in the final report, further stakeholder engagement is required in its development to ensure an appropriate balance is achieved, between facilitating discussion between a PA and an applicant, and issuing timely decisions. Matters such as the scope of the functions, the notice period and any necessary changes to performance targets will require further consideration.
8-11	We recommend that, in addition to the general power to impose conditions referred to in Recommendation 8-10, the Bill should only include an explicit power to impose conditions of a particular type where statutory authority is required – for example, in order to enable such a condition to be enforced against a person other than the applicant - otherwise, advice as to conditions should be contained in guidance.	Accept	Based on discussions with the Law Commission, it is our understanding the Law Commission is recommending that specific provision should only be made for additional conditions in respect of matters not covered by the general power to impose conditions referred to in Recommendation 8-10. These are the conditions referenced in Recommendations 8-15, 8-16 and 8-18. We have responded to each of these recommendations individually. For all other types of conditions advice should be provided in guidance. On this understanding, the Welsh Government agrees with this recommendation.
8-12	We recommend that the Bill should not include a provision enabling the imposition of conditions to the effect that: 1) the approved works are not to start until some specified event has occurred (a Grampian condition); or 2) the approved works are not to be carried out until: o a contract for some other development has been made; and o planning permission has been granted for the development for which the contract provides, but that Welsh Government guidance should include advice as to the circumstances in which such conditions would be appropriate.	Accept	The Welsh Government agrees there is no reason to include a specific provision in the Bill enabling the imposition of *Grampian* conditions. We agree the courts have put beyond doubt the lawfulness of imposing Grampian conditions. Therefore, in accordance with Recommendation 8-11 – i.e. that the consolidation Bill should only include an explicit power to impose conditions of a particular type where statutory authority is required – such a provision is unnecessary. When the Development Management Manual is next reviewed and updated to incorporate WGC 016/2014: The Use of Planning Conditions for Development Management, the guidance it contains about the use of Grampian conditions can be expanded to give PAs greater confidence when applying such conditions.
8-13	We recommend that: 1) the Welsh Government should issue guidance discouraging the creation of any unnecessary burdens by the imposition of inappropriate conditions, and in particular by the drafting of conditions by reference to the commencement of development; 2) no legislative change should be made to enable pre-commencement conditions to be definitely categorised (as per Hart Aggregates);	8-13(1) and 8-13(2) - Accept 8-13(3) - Reject	In respect of Recommendation 8-13(1), the Welsh Government agrees any future review of Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management will include guidance discouraging the creation of unnecessary burdens by the imposition of inappropriate conditions. In light of Recommendation 8-13(2), our future review of this guidance may also present the opportunity to provide greater clarity in respect of conditions precedent in light of the principles arising from case law. We do not agree with the proposal set out in Recommendation 8-13(3) in relation to affording applicants the opportunity to apply for a certificate to confirm whether all pre-commencement

	3) where permission is granted subject to one or more conditions requiring that the development in question may not be commenced until certain matters have been resolved, an applicant should be able to apply for a certificate stating that all of those conditions have been complied with; and 4) where development has commenced in breach of a condition precedent, and is as a result deemed to be immune from enforcement action, the permission that would otherwise have authorised it is deemed to have been granted with the omission of the condition in question, such that the remaining conditions may subsist and be enforceable.	8-13(4) - Accept in principle	conditions have been complied with. A similar proposal was considered during the production of the Planning (Wales) Act 2015, but was not taken forward by the Welsh Government as PAs already offer such an opportunity via a certificate of lawfulness. Such a procedure would also be unlikely to provide a definitive decision in cases where a condition required ongoing compliance. Introducing a new procedure would introduce unnecessary complexity rather than clarity. Finally, taking account of consultation responses, particularly those of the Planning and Environment Bar Association, we agree with the principle of Recommendation 8-13(4). Where development is undertaken without compliance with a pre-commencement condition, we note the extensive case law. The Welsh Ministers accept the concern that if a permission has not been implemented it could subsequently become immune from enforcement action upon expiration of the period set out in section 171B(1) of the TCPA 1990 and be able to continue free from any conditional controls imposed under the original 'unimplemented' planning permission. Whilst effective and timely planning enforcement would prevent this occurrence, it is acknowledged that there will be instances where development does become immune under these circumstances, resulting in conditions that may have been imposed to manage the impacts of a development no longer being enforceable. We will consider how the issue might be resolved including the recommendation for permission to have been deemed to have been granted with the omission of the condition(s) in question, which means the remaining conditions may subsist and be enforceable. Further consideration is required to ensure that any solution does not result in any unintended consequences. To the extent that any solution would constitute a policy change, it is likely to require a reform Bill for its delivery rather than through the scope of the consolidation exercise. Further stakeholder engagement as part of the review to inform that Bill will be important to draw out any unintended consequences of taking forward this change.
8-14	We recommend that a provision should be included in the Bill setting out that: 1) development authorised by permission granted in response to an application must be commenced by the date or dates specified in any relevant condition; and 2) in the absence of any such condition the development must be commenced within five years of the grant of permission.	Accept	Having discussed with the Law Commission, the Welsh Government understands that the intention is not to change the law (i.e. there is no intention to limit this recommendation to development authorised by permission on application). The Welsh Government agrees with the recommendation to retain the current provision that development must be commenced by the date specified in any relevant condition; or within five years in absence of such condition. We note the Law Commission's position that in practice section 91(1) of the TCPA 1990 is often misinterpreted as a requirement that all development must be carried out within five years, without exception. We understand the Law Commission's recommendation is that the Bill should clarify the five year period is a back stop if no other period is specified. Consideration will be given to how this is best achieved during the course of drafting the consolidation Bill. We also agree with respondents to the consultation that conditions relating to multi-phase developments raise different issues compared to more straightforward development. Such developments should be the subject of negotiation between the PA and the developer to agree a commencement schedule and not be subject to a default period.

8-15	We recommend that the Bill should include a provision to the effect that planning authorities may impose conditions providing that the development or use of land under the control of the applicant (whether or not it is land for which the application has been made) should be regulated to ensure that the approved development is and remains acceptable in planning terms.	Accept	Following discussions with the Law Commission we understand this recommendation is to restate section 72(1)(a) and on that basis we agree with the recommendation. Retaining equivalent provision will help avoid any doubt that might otherwise arise as to the lawfulness of such conditions.
8-16	We recommend that the Bill, or regulations under the Bill, should enable the imposition of conditions where permission has been granted for a limited period, to the effect that: 1) at the end of the period the buildings or works authorised by the permission be removed, or the authorised use be discontinued, and 2) works be carried out at that time for the reinstatement of land.	Accept	The policy effect sought through this recommendation is already achieved through existing provisions set out in section 72(1)(b) and 72(2) of the TCPA 1990. Retaining equivalent provision will help avoid any doubt that might otherwise arise as to the lawfulness of such conditions.
8-17	We recommend that a provision equivalent to section 72(3) of the TCPA 1990 (as to time-limited conditions) should be retained in the Code, but drafted so as to make clear that it applies only in the case of: 1) permissions issued between 29 August 1960 and 31 December 1968; and 2) time-limited permissions issued under what is now section 72(1)(b).	Accept	The Welsh Government agrees with the recommendation, as it will retain an important provision by restating section 72(3) of the TCPA 1990 in an amended form to provider greater clarity as to when it applies (and when it does not). The precise wording used will require careful consideration during the drafting of the consolidation Bill.
8-18	We recommend that the Bill should enable the imposition of conditions to the effect that: 1) particular features of the building or land to which the permission relates be preserved, either as part of it or after severance from it; 2) any damage caused to the building or land by the authorised works be made good after those works are completed; or 3) all or part of the building or land be restored following the execution of the authorised works, with the use of original materials so far as practicable and with such alterations as may be specified.	Supporting evidence for further consideration	The Welsh Government notes the recommendation and the support it received from the majority of respondents to the consultation. However, we note the existing provisions to impose conditions for a planning purpose in the TCPA 1990 and the protections afforded to listed buildings in the Planning (Listed Buildings and Conservation Areas) Act 1990. We therefore wish to consider in more detail if any further provision in planning legislation is required. Further consideration is needed as to whether the planning system is the most appropriate mechanism to preserve the features of such buildings or land where it does not benefit from statutory protection or designation under other legislation. In particular, when the decision of whether a feature of a building or land is worthy of protection is likely to be subjective with no or little planning merit or reason. To the extent that conditions cannot be imposed under existing legislation this recommendation would constitute a policy change that would need to be included in a future reform Bill. Therefore, it will be considered further as part of the evidence base to inform this future Bill and in the context of the conclusions reached by the review to be undertaken of statutory consents with direct overlaps with the planning system, which will include listed building consent, as highlighted in our response to Recommendation 13-1A.

8-19	We recommend that the Bill should clarify the existing law and procedures as to the approval of details required by a condition of a planning permission, whether imposed at the request of an applicant (in relation to matters not sufficiently particularised in the application) or instigated by the authority itself.	Accept	To the extent that the law for both the approval of details required by a condition of a planning permission and the approval of reserved matters relating to outline planning permission can be further clarified it is the Welsh Government's intention to do so. It is important that the statutory framework has a clear and consistent basis for the procedures that are currently operated. In our response to Recommendation 8-1 we have highlighted our intention to provide further policy consideration to the value of outline planning permission and associated reserved matters. However, it is important that the existing law relating to reserved matters applications is clarified through the consolidation Bill whilst this is undertaken as part of a future programme of work that may require a reform Bill for its delivery. The extent to which the law can be clarified will be considered and determined during the exercise of preparing and drafting the consolidation Bill and we note some of the areas of clarification suggested by the Law Commission. During this exercise we will also consider whether the required clarification is better achieved through guidance.
8-20	We recommend that a provision should be included within the DMP(W)O enabling a planning authority to decline to determine an application for the approval of a reserved matter or an approval required by a condition unless further details are supplied, by a procedure analogous to that in article 3(2) of the DMP(W)O 2012.	Accept in principle	Where certain conditions are interdependent on one another, the Welsh Government agrees with the Law Commission's view that it would be beneficial for the determining authority to have all the information and details at their disposal, in order to make an informed decision and to ensure these conditions are not considered in isolation. However, we do not necessarily agree with the suggested approach. We will explore further whether the desired result can be achieved by different amendments to the Development Management Procedure (Wales) Order 2012. This will include exploring whether amendments to the validation requirements associated with applications for approval required by condition or an approval of a reserved matter may provide a better approach. However, in the context of reserved matters applications, it must be noted that our further consideration on the value of outline planning permission (as highlighted in our response to Recommendation 8-1) may result in the concept of such applications becoming redundant and associated legislation no longer required.
8-21	We recommend that the Bill should clarify the existing law and procedures as to the approval of details required: 1) by a condition of a permission granted by a development order; or 2) by a planning authority following a notification of proposed works under a development order.	Accept	The Welsh Government agrees with this recommendation. It is important the law is clear as to the procedures for the approval of details. The Welsh Government will be reviewing the law in respect of the matters subject to the recommendation as part of the consolidation exercise and will take any opportunities to provide additional clarity and/or simplification of the law where appropriate. Any subsequent amendments to subordinate legislation to improve accessibility will be undertaken when the relevant legislation is reviewed in the future.
8-22	We recommend that no change should be made to the law regarding the time limits within which authorities should respond to notification of development permitted by certain Parts of the GPDO (for example, those relating to buildings for agriculture and forestry).	Accept	The Welsh Government agrees with this recommendation, as we consider that the existing time limits associated with prior approval in the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) is sufficient. Notwithstanding this, we have consulted upon amending the GPDO to permit LPAs and applicants to agree an extension to this period when further discussion or consideration of the proposal is necessary. This legislative change is anticipated to be brought forward as part of future amendments to the GPDO.

8-23	We recommend that section 73 of the TCPA 1990, governing the procedures for seeking amendments to conditions attached to a planning permission, should be restated in the Bill in an amended form so as to allow the making of an application for any amendment to a permission, including but not limited to a change of conditions, provided that: 1) in considering such an application, the planning authority should be under a duty to consider only the part of the planning permission to which the variation application relates; 2) if it decides that the proposed amendment is sufficiently minor that it could have been dealt with by an application under the provision restating section 96A (non-material minor amendments), the authority can treat the application as if it had been made under that provision; and 3) if it decides that the proposed amendment should be the subject of a new application, it should notify the applicant as soon as possible.	8-23(1) – Accept 8-23(2) & 8-23(3) – Accept in principle	The Welsh Government agrees section 73 of the TCPA 1990 should be restated and its scope extended to enable minor material amendments to a planning permission to be achieved by allowing changes to the operative part of the permission (i.e. the description of development) in addition to the associated conditions. We also agree that where an amendment to an extant planning permission is being proposed through an application made under section 73, the PA's focus of consideration should be on the proposed amendment to the permission. The PA should not take the opportunity to revisit any other parts of the permission, unless its consideration of the direct, indirect, cumulative or environmental impacts of the proposed amendment requires it to do so. Section 73(2) of the TCPA 1990 already narrows the PAs consideration of an application made under section 73 to "only the question of the conditions subject to which planning permission should be granted". Further, as noted by the Law Commission, the Court have held the determination of an application under section 73 was a matter to which the duty to have regard to the development plan would apply (see our response to Recommendation 5-1 in this regard) and the PA must not ignore the wider considerations affected by the proposed amendment, as a successful application would result in a new permission. We consider including further provision on the scope of the power in section 73 will provide greater clarity. The precise wording to be used will require careful consideration during the drafting of the Bill. We note the Law Commission's suggestion that PAs should have the ability to convert an application made under section 73 (application for minor material amendments) to one made under section 96A (application for non-material amendments) where they consider it to be appropriate and the applicant is in agreement. We agree with the principle of creating greater flexibility for PAs to deal with an application in accordance with the scale of the amendment, whilst also retaining the non-material amendment procedure provided under section 96A of the TCPA 1990, which consultees felt should be retained as a separate procedure. However, we have some concerns whether the proposed approach will work in practice given the important differences between both application procedures, such as who can apply and the type of permission issued. This will require further consideration, as well as the legislative changes that may be needed to achieve the suggested conversion and any associated procedure, which will need to be quick and simple. We also agree with the Law Commission's view that the applicant should be notified as soon as possible where the PA has determined that the proposed amendment should be the subject of a new application. This is likely to follow existing practice by PAs. However, as this administrative action should be undertaken by the PA as good practice, we believe it could be more appropriate for it to be set out in guidance rather than as a legislative requirement. This will be included as part of a future update to the Development Management Manual.
8-24	We recommend that the Bill should make it clear that the scope of the provision restating section 96A (approval of minor amendments) includes the making of non-material minor amendments to the details of a development approved in response to a condition of a permission.	Accept	Section 96A of the TCPA 1990 allows for the making of non-material minor amendments to an existing permission, including to conditions attached to a permission. We agree that the restated provision should make it clear that this power extends to include non-material amendments to the details approved under conditions attached to a planning permission. We note the Court of Appeal in R. (on the application of Fulford Parish Council) v York City Council held the power conferred on PAs by section 96A of the TCPA 1990 included the power to make such changes to conditional approvals of reserved matters. We consider it would be helpful to clarify this in the Bill. The precise wording to be used will require careful consideration during the drafting of the consolidation Bill.

8-25	We recommend that there should be available an expedited procedure for the determination of an application to vary a permission – under the provisions restating either section 96A or section 73 – where the implementation of the permitted development is imminent or under way, limited to cases that have not attracted representations in relation to the part of the development now sought to be varied.	Reject	The Welsh Government does not agree with the Law Commission's view on this matter. We acknowledge there may occasionally be a need to seek an urgent amendment to a permission once development has commenced as a result of issues arising on-site in order to prevent delays to the delivery of the development. However, we agree with comments received from Planning Officers Society Wales and some PAs that the acceptability of a variation to a permission must depend upon its material impact and not upon the developer's need to have the matter decided quickly. An expedited procedure already exists through section 96A, with article 28A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO 2012) requiring a decision to be issued within 28 days (unless a longer period is agreed in writing with the applicant). It is unreasonable to expect a PA to expedite this process further without impacting upon the quality of decision-making, as evidenced by the comments received to the consultation question in respect of resourcing. If an amendment is material, then it is appropriate that it is subject to detailed consideration by the PA, including any relevant consultees. Notwithstanding this, the recommendation will only apply to a small number of applications, i.e. those where no representations were made in relation to the part of the original application which is sought to be varied, reducing the benefit of introducing legislative changes. Furthermore, it is unclear whether the expedited procedure envisaged by the Law Commission would include consultation. It may have been the case that a consultee made no representations on the original application as they were content with the proposal at that time. However, the proposed amendment may raise new issues which would warrant consultation and subsequent representations being made to the PA, which would be challenging to achieve within the determination timescales proposed in the Report (14 days for proposed non-material amendments and 28 days for a proposed minor material amendments).
8-26	We recommend that the Bill should include a provision that empowers Welsh Ministers to: 1) make regulations requiring applications in a particular category to be notified to them, and 2) make a direction requiring a particular application to be so notified, so that they may decide whether to call it in for their decision.	Accept in principle	The Welsh Government agrees with the second part of this recommendation. We also note the first part which recommends the Bill should include a provision that gives the Welsh Ministers power to make regulations requiring certain categories of applications to be notified to them. We acknowledge that it is desirable to ensure that the notification and call-in process operates as transparently as possible but wish to consider further whether regulations are necessary in the context of a requirement to notify the Welsh Ministers of planning applications. The current position is that notification directions are made under powers in the DMPWO 2012. Implementing this recommendation would require a new enabling power to be included in the Bill. Notification directions place a minor administrative duty on PAs. They require a PA to notify the Welsh Ministers of certain types of applications by providing a copy of the application, supporting documentation and any representations made, and restricts its determination by the PA for a short period of time (21 days) to enable the Welsh Ministers to consider whether or not it should be 'called in'. If a decision is made to 'call in' a particular application a subsequent direction in relation to that particular application is issued. General notification directions are published. We will, however, consider whether publication could be improved, for example, by way of publication on the 'Cyfraith Cymru/Law Wales' website.

			The requirement to notify provides the Welsh Ministers with the opportunity to check that national planning policies are being adhered to in important policy areas such as flood risk area development and development of unconventional oil and gas resource. It does not introduce new planning policy or place any additional regulatory requirements on PAs when considering and processing planning applications. The current procedure allows the Welsh Ministers to respond quickly to cases of new and emerging technologies / developments and fast changing policies. The Welsh Ministers must continue to be able to respond at pace to such changes in order to effectively police the planning system with the purpose of upholding and giving effect to national policy. We wish to consider further whether implementing the recommendation may limit the Welsh Minister's current ability in relation to this matter.
8-27	We recommend that, where the Welsh Ministers decide to call in an application for planning permission, they (rather than the planning authority) should be under a duty to notify the applicant.	Accept	The Welsh Government already notifies an applicant of the Welsh Ministers' decision to call–in their application at the same time as the PA is notified. However, it is the PA that has the duty to serve the notice of reference required by article 13 of the DMPWO 2012. As the Welsh Ministers take the decision to call-in an application we agree that the duty to notify the applicant of its decision should be placed on the Welsh Ministers rather than the PA. How this is best achieved will be considered during the drafting of the Bill.
8-28	We recommend that the following provisions currently in the TCPA 1990 should not be restated in the Bill, but that equivalent provisions should be included in secondary legislation if considered necessary: 1) section 71(3) (consultation as to caravan sites); and 2) section 71ZB (notification of development before starting, and display of permission whist it is proceeding) and that such secondary legislation takes account of the special features of development in particular categories, including in particular minerals.	Accept	The Welsh Government agrees that the procedural requirements set out in section 71(3) and parts of section 71ZB of the TCPA 1990 are best placed in secondary rather than primary legislation. During the exercise of preparing and drafting the Bill, we will need to consider further how this is best achieved. We note the comments made by the Mineral Products Association regarding difficulties in displaying information onsite relating to mineral permissions as required by section 71ZB(2) and the revision of the Law Commission's provisional proposal as a result of comments received. The intended effect of this provision is to support greater clarity, transparency and certainty for all stakeholders, including local communities, in the development management process, in particular where a single development has multiple permissions. Whilst we have no intention to remove the requirement to display a notice, we will give consideration to the form and manner of the notice. Any future changes will need to be subject to public consultation.
8-29	We recommend that the following provisions currently in the TCPA 1990, which appear to be redundant (at least in relation to Wales), should not be restated in the Bill: 1) section 56(1) (the initiation of development); 2) in section 70(3), the reference to the Health Services Act 1976 (applications for private hospitals); 3) section 74(1)(b) (to make provision for the grant of permission for proposals not in accordance with the development plan); 4) section 74(1A) (planning applications being handled by different types of planning authority); 5) section 76 (duty to draw attention to certain provisions for the benefit of disabled people); and	8-29 (1) to (5) – Accept 8-29 (6) – Reject	The Welsh Government agrees with the proposal not to restate section 56(1) of the TCPA 1990 in the consolidation Bill. Planning legislation contains various references to development being "begun," "started" or "commenced" and only one reference to it being "initiated". We will consider generally whether these references can be made more consistent, and whether any clarification of their meaning is required. We also agree the reference to the Health Service Act 1976 in section 70(3) of the TCPA 1990, along with section 74(1)(b) and section 74(1A) of the TCPA 1990, should not be restated in the Bill. These are unnecessary in relation to Wales as they should have been repealed as a consequence of amendments made to legislation over the years or are not relevant to the planning system in Wales. As acknowledged by the Law Commission, Section 76 of the TCPA 1990 has already been repealed by Schedule 9 to the Planning and Compulsory Purchase Act 2004.

	6) section 332 (power of Welsh Ministers to direct that planning applications should also be treated as applications under other legislation).		However, we do not accept the power provided by section 332 of the TCPA 1990 is redundant. As highlighted in our response to Recommendations 13-1A, 13-1B, 13-9, 14-7 and 15-5, we are proposing as part of a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. If this review concludes the need to bring together particular statutory consenting regimes, section 332 may be one method by which this could be achieved.
8-30	We recommend that the power to determine an application for planning permission, currently in section 70(1) of the TCPA 1990, should be clarified to make explicit the power of an authority to grant permission for all or part of the development that is the subject of the application.	Accept in principle	The Welsh Government agrees in principle with clarifying the law to enable a PA to grant planning permission for all or part of a development. Currently, in cases where a PA considers part of a development to be unacceptable, it would seek an amendment to the submitted scheme, removing the unacceptable part of the development from the application. This can result in a delay in determining the application. The ability to issue a split decision, similar to applications for advertisement consent, which enables consent to be granted in whole or in part, would provide PAs with greater flexibility when determining applications. However, further consideration is required regarding the technicalities of issuing a split decision, including the structure of the decision notice and any associated changes to the appeals process. The proposed improvement constitutes a policy change that is likely to require a reform Bill for its delivery rather than through the scope of the consolidation exercise. Any Welsh Government proposal resulting from further consideration of this recommendation and any associated procedure will be subject to a public consultation in order to inform a future reform Bill and consequential changes to subordinate legislation.
8-31	We recommend that there should be a duty on planning authorities to provide a reason for a decision to grant planning permission in the face of a recommendation by officers to refuse permission.	Accept	The Welsh Government agrees with the recommendation to introduce a formal duty for PAs to provide a reason for a decision to grant planning permission in the face of a recommendation by officers to refuse permission i.e. a decision taken by the planning committee or full Council that is contrary to the recommendation of their officers. We agree this would improve transparency in the decision-making process by setting out why a permission has been granted by members against the officers' recommendation. This suggested improvement will be undertaken as part of a future package of amendments to the DMPWO 2012.
8-32	We recommend that the provisions in the TCPA 1990 relating to the service of completion notices be restated in the Bill, amended so as to refer to a notice being "issued" rather than "served".	Accept	The Welsh Government agrees the provisions relating to completion notices should be restated in the consolidation Bill. These provisions provide PAs with useful powers in order to resolve uncertainties and negative planning impacts arising from incomplete development. We also agree that the provisions should refer to these notices being "issued" rather than "served". This will provide consistency with the approach for other notices outlined in Recommendations 12-8 and 12-17.

Chapter 9 - Applications to the Welsh Ministers

No.	Recommendation	Welsh Government Response	Comments
9-1	We recommend that sections 62M to 62O of the TCPA 1990, enabling a planning application to be made directly to the Welsh Ministers in the area of an underperforming planning authority should be restated in the new Bill, subject to appropriate adjustments to reflect our recommendations in Chapters 7 and 8.	Accept	The Welsh Government agrees that these provisions must be retained as they provide the Welsh Ministers with important powers to designate a planning authority (PA) as poorly performing, which as a result provides applicants with the option to refer their applications for planning permission directly to the Welsh Ministers instead of the PA for determination during the designation period. These powers are needed to ensure underperformance does not become a barrier to development or reduce certainty in the planning system for both developers and the local community. The need for these powers was supported by the evidence base to the Planning (Wales) Act 2015 and was carefully considered by the Assembly during their scrutiny of the Bill. The Government's position was made clear during the scrutiny of the Bill that they would only be used as a means of last resort when all other avenues to encourage improvement have not worked. This continues to be our policy position. These powers and associated procedures have not yet been commenced, as we continue to explore with PAs ways of increasing long term resilience in planning service delivery in the context of diminishing budgets and resources. This includes Corporate Joint Committees proposed in the Local Government and Elections (Wales) Bill who may have a role in delivering land use planning functions, which is currently being scrutinised by the Senedd. Where we have accepted to take forward proposed changes set out in Chapters 7 and 8 of the report, which relate to planning applications made to a PA, we will make appropriate adjustments to these provisions.
9-2	We recommend that the law relating to pre-application consultation and pre-application services in connection with developments of national significance should be reviewed and, where appropriate, clarified.	Accept	The Welsh Government agrees with the Law Commission's view that certain aspects of the legislation relating to pre-application consultation and pre-application services in relation to developments of national significance (DNS) would benefit from further clarification. It is recognised that there may be ambiguity as to the scope and application of both pre-application services and pre-application consultation, where it concerns secondary consents related to developments of national significance applications. This will be considered in detail during the drafting of the Bill, and the precise wording that should be used will require careful consideration in the context of each provision. Notwithstanding this, it is the Welsh Government's objective to introduce a unified and bespoke infrastructure consenting process in Wales, which would effectively replace the current DNS regime. A consultation was published on 30 April 2018 setting out these proposals. The new consenting process will be delivered through a future reform Bill. At present, this Bill is not part of the Welsh Government's legislative programme; however, the programme remains under constant review.

9-3	We recommend that the power to appoint assessors to assist inspectors to determine DNS applications that are the subject of inquiries or hearings should be extended to allow their appointment in connection with applications determined on the basis of written representations.	Accept	The Welsh Government agrees with the recommendation to extend the appointment of assessors to cases determined by written representations for the purposes of DNS. This would expedite the determination of DNS applications and is consistent with our position in relation to Recommendation 11-3. Reference is drawn to our comments in Recommendation 9-2 regarding the future of the DNS procedure.
9-4	We recommend that sections 62D to 62L of the TCPA 1990 should be restated in the new Planning Bill, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.	Accept	The Welsh Government agrees with the proposal to restate sections 62D to 62L of the Town and Country Planning Act 1990 into the Bill as these are more recent provision introduced in the Planning (Wales) Act 2015. Where we have accepted to take forward proposed changes set out in Chapters 7 and 8 of the report, which relate to planning applications made to a PA, we will consider making appropriate adjustments to these provisions for the purposes of DNS contemporaneously. Reference is drawn to our comments in Recommendation 9-2 regarding the future of the DNS procedure.
9-5	We recommend that section 101 and Schedule 8 to the TCPA 1990 (planning inquiry commissions) should not be restated in the new Planning Bill.	Accept	The Welsh Government agrees that section 101 and Schedule 8 to the Town and Country Planning Act 1990 are redundant and should not be included in the consolidation Bill. No Planning Inquiry Commissions have been constituted in Wales and their need has largely been removed by the introduction of the DNS process. We note the Encyclopaedia of Planning Law and Practice highlights that the procedure has fundamental flaws, which is supported in statements made by the UK Government.

Chapter 10 - The provision of infrastructure and other improvements

No.	Recommendation	Welsh Government Response	Comments
10-1	We recommend that the statutory provisions relating to CIL, currently in Part 11 of the Planning Act 2008 as amended by the Localism Act 2011, should be incorporated into the Planning Bill, pending any more thoroughgoing review that may take place in due course.	Accept	The Welsh Government agrees that the existing provisions relating to Community Infrastructure Levy (CIL) should be included in the consolidation Bill. As highlighted in the final report, legislative competence relating to CIL has only recently been devolved through the Wales Act 2017. Our future policy approach to CIL and planning obligations will need to be considered as part of the Welsh Government's wider and long-term review of these arrangements. Engagement with stakeholders will be vital to inform our future policy approach. It is sensible to carry forward these provisions into the consolidated planning legislation without any substantive alterations whilst this policy area is being reviewed. Given the close relationship between CIL and planning obligations, there is benefit to users and operators of the system in bringing these provisions together under a single piece of legislation rather than having them in separate Acts, as is currently the case.
10-2	Subject to the following recommendations in this Chapter, we recommend that provisions relating to planning obligations, currently in sections 106 to 106B of the TCPA 1990, should be incorporated into the Planning Bill, pending any more thoroughgoing review that may take place in due course.	Accept	See response to Recommendation 10-1
10-3	We recommend that the rules as to the use of planning obligations, currently in regulation 122 of the CIL Regulations, should be included within the Planning Bill.	Accept	The Welsh Government accepts this recommendation. Moving the provision for the use of planning obligations from regulations into the Bill will confirm the statutory nature of the tests currently set out in regulation 122 of the CIL regulations. This is also consistent with our approach to planning conditions which, following Recommendation 8-10, will result in the tests for the use of planning conditions also being moved into the consolidation Bill.
10-4	We recommend that any future review of the law relating to planning obligations should consider introducing a provision whereby a planning agreement (under what is now section 106 of the TCPA 1990) could in certain circumstances include provision that could be included in an agreement under section 278 of the Highways Act 1980.	Accept	The Welsh Government will consider this matter in greater detail as part of the wider review referred in our response to Recommendation 10-1. We note the views of the Law Commission and those of respondents to the consultation, which will inform our detailed consideration when undertaking this review.
10-5	We recommend that any future review of the law relating to planning obligations should consider bringing the breach of a planning obligation under section 106 of the TCPA 1990 within the definition of a breach of planning control.	Accept	The Welsh Government will consider this matter in greater detail as part of the wider review referred in our response to Recommendation 10-1. We note the views of the Law Commission and those of respondents to the consultation, which will inform our detailed consideration when undertaking this review.

10-6	We recommend that section 106(12) of the TCPA 1990, which empowers the Welsh Ministers to provide regulations whereby the breach of an obligation to pay a sum of money would result in the imposition of a charge on the land to facilitate recovery from subsequent owners, should not be restated in the Planning Bill.	Reject	The Welsh Government considers section 106(12) of the Town and Country Planning Act (TCPA)1990 remains of practical use. Whilst no regulations have been made to date, we note the comments made by some respondents as to the potential usefulness of future regulations. We note a planning obligation is a local land charge under section 106(11). Regulations under section 106(12)(a) could provide for the charging on the land of any sum or sums required to be paid under a planning obligation. Whilst no regulations have been made, we wish to retain the power to make such regulations to provide for a sum of money payable under a planning obligation to be registered as a legal or land charge which may facilitate recovery from current owners. In respect of section 106(12)(b), the ability for Planning Authorities (PAs) to recover expenses incurred from subsequent owners is consistent with regulations made under sections 178(5) and 219(5) of the TCPA 1990, which provide for the charging on the land of any expenses recoverable by a PA through sections 178(1) and 219(1) respectively. We also note recommendation 15-13 recommends using the power in section 209(5) of the TCPA 1990 to make regulations providing for the charging on the land of any expenses recoverable by a PA under section 209(1). There is currently no compelling evidence which indicates PAs have had difficulties in recovering monies through the courts which would necessitate the making of regulations under section 106(12). Notwithstanding this, we do not wish to limit our ability to tackle any challenges which may occur when PAs are seeking to recover financial obligations and expenses should circumstances change in the future. We will consider this in more detail as part of any future review we undertake relating to CIL and section 106. Consideration will be given to whether the regulation making power should be carried over into the Bill or by making express provision in the Bill that sums required by a planning obligation and recoverable expenses may be registered as land charges.
10-7	We recommend that the use of standard clauses in planning obligations should be promoted in Welsh Government guidance.	Accept	The Welsh Government accepts the recommendation. We acknowledge the positive response from stakeholders to the proposal and agree there is potential for standard clauses to be included in guidance to assist with expediting the drafting process. Some guidance has already been published on this matter, with '*Securing Mortgage Access for Affordable Housing: A good practice note for planning and housing practitioners'* (2013) setting out standard clauses relating to the delivery of affordable housing. This was undertaken in partnership with the Welsh Local Government Association (WLGA), the Welsh Government and the Council of Mortgage Lenders in response to the difficulties being encountered by all parties in providing affordable housing in perpetuity. A collaborative approach with stakeholders, such as WLGA, Planning Officers Society Wales and the Law Society, to the production of this guidance will also be vital to ensure standard clauses set out in the guidance will facilitate the drafting of obligations by PAs and developers.
10-8	We recommend that any future review of the law relating to planning obligations should consider introducing a procedure to resolve disputes as to the terms of a section 106 agreement, possibly along the lines of Schedule 9A to the TCPA 1990.	Accept	The issue raised and the suggested approach taken in England will be considered in greater detail by the Welsh Government as part of the wider review referred in our response to Recommendation 10-1. We note the views of the Law Commission and those of respondents to the consultation, which will inform our detailed consideration when undertaking this review.

10-9	We recommend that any future review of the law relating to planning obligations should consider the introduction of a procedure for the Welsh Ministers to impose restrictions or conditions on the enforceability of planning obligations as they relate to particular categories of benefits.	Accept	The issue raised and the suggested approach taken in England will be considered in greater detail by the Welsh Government as part of the wider review referred in our response to Recommendation 10-1. We note the views of the Law Commission and those of respondents to the consultation, which will inform our detailed consideration when undertaking this review.
10-10	We recommend that a planning authority should be given power, when granting planning permission for the development of its own land, to pass at the same time a resolution setting out the terms of an obligation that will be deemed to have been entered into by any third party acquiring the land within a specified period.	Accept in principle	The Welsh Government agrees in principle with the recommendation, which received significant support from respondents to the consultation. We note a Local Authority cannot enter into an agreement with itself and the revised recommendation addresses this. Further consideration of the legal and practical issues, including enforcement, is required. This recommendation will constitute a policy change that is likely to require a reform Bill rather than a consolidation Bill. These issues will be considered as part of the review to inform that Bill.
10-11	We recommend that a person other than the owner of land (including but not limited to a person considering entering into a contract for the purchase of it) should be able to enter into a planning obligation relating to the land, which would take effect if and when a relevant interest is actually acquired by that person. Any permission linked to such a provisional obligation should be subject to a condition that, in the event that the land passes into the hands of a third party, the permitted development is not to be started until an agreement in the same or substantially the same terms has been concluded with the authority.	Accept in principle	Although the principle behind this recommendation is rational, the Welsh Government has a number of concerns which will require further engagement with stakeholders to fully understand the implications of this proposal. In particular, as expressed by some respondents to the consultation, we need to consider the principle of whether the conditional agreement should run with the land or only bind the prospective owner who enters into it. This recommendation will constitute a policy change that would need to be included in a reform Bill. These issues will be considered as part of the review to inform that Bill.

Chapter 11 - Appeals and other supplementary provisions

No.	Recommendation	Welsh Government Response	Comments
11-1	We recommend that section 79(1) of the TCPA 1990 should be incorporated in the Planning Bill broadly without amendment.	Accept	The Welsh Government notes that the provisional proposal in the Consultation Paper has been revised in light of comments received from respondents, in particular those made by the Planning Inspectorate Wales. We share the view of the Planning Inspectorate that section 79(1) already provides Planning Inspectors with the flexibility to consider an application afresh when determining planning appeals on behalf of the Welsh Ministers. As highlighted by the Planning Inspectorate, the starting point for the majority of appeals will be the planning authority's (PA) reason(s) for refusal. Therefore the existing legislation provides Planning Inspectors with the discretion to go beyond the main issues if there are any other substantive matters that could be important in the determination of the appeal. If the legislation was to be amended to place a requirement on Planning Inspectors to consider the application afresh, as initially proposed in the consultation paper, it would result in unnecessary duplication of work increasing time and cost of appeals to both Planning Inspectorate and PAs. We are pleased the Law Commission recognises the problems that would arise from the initial proposal and amended your position on this matter in the recommendation. Therefore, we agree with the recommendation, that the existing flexibility contained in section 79(1) should be retained and carried forward into the consolidation Bill.
11-2	We recommend that the Bill should clarify that all appeals (including those relating to development proposals by statutory undertakers) are to be determined by inspectors, except for: 1) those in categories that have been prescribed for determination by Welsh Ministers; and 2) those that have been recovered by Welsh Ministers (in case-specific directions) for their determination.	Accept in principle	As Planning Inspectors now determine most appeals under the Town and Country Planning Act 1990 (TCPA 1990) and certain appeals under the Environment Act 1995, the Welsh Government agrees the existing provisions do not reflect how the system operates in practice. We agree it would be simpler and clearer if the legislation was amended to reverse the current presumption that the Welsh Ministers are directly responsible for the determination of planning related appeals unless delegated to a person appointed by them, to one whereby it is clear that the responsibility lies with the appointed person (Planning Inspectors), unless specified by the Welsh Ministers. There are a small number of appeals under the principal planning Acts that are determined directly by the Welsh Ministers, such as those highlighted in the report relating to statutory undertakers and unsightly land and building notices made under section 217 (Recommendation 16-4). We will need to consider each appeal of this nature in more detail to determine whether or not they should or can be determined by an appointed person (Planning Inspectors) rather than the Welsh Ministers. This exercise will be undertaken during the preparation and drafting of the consolidation Bill. In the context of appeals against unsightly land and building notices made under section 217, our position is set in our response to Recommendation 16-4.

11-3	We recommend that the power to appoint assessors to assist inspectors to determine appeals and other proceedings that are the subject of inquiries or hearings: 1) should be widened so as to be exercisable by inspectors as well as by the Welsh Ministers; and 2) should be extended to allow the use of assessors in connection with such proceedings determined on the basis of written representations.	Accept	These recommended changes support the wider changes recommended by the Law Commission to ensure greater consistency is achieved across planning legislation. The Welsh Government agrees Planning Inspectors should have the same powers as the Welsh Ministers to appoint assessors. Broadening the provision in this manner will enable Planning Inspectors to appoint assessors in an expedited manner to assist and advise them in their determination of appeals. We also agree the provisions should be extended to where appeal proceedings are determined by written representations. This will ensure the provisions consistently apply across all types of appeal procedures.
11-4	Subject to our recommendations in Chapter 13 relating to listed buildings and conservation areas, we recommend that the changes proposed in recommendations 11-1 to 11-3 should apply equally to: 1) appeals against enforcement notices; 2) appeals relating to decisions relating to applications for listed building consent or conservation area consent, express consent for the display of advertisements, and consent for the carrying out of works to protected trees; and 3) appeals against listed building and conservation area enforcement notices, advertisements discontinuance notices, tree replacement notices, and notices relating to unsightly land.	Accept in principle	In light of our response to Recommendations 11-2 to 11-3, the Welsh Government agrees the proposed changes should also apply to the types of appeals identified by this recommendation. In practice many already operate in the same manner to appeals relating to planning applications; for example, the majority of these appeals are already dealt with by Planning Inspectors. These are changes that will ensure greater consistency is achieved across planning legislation. We will, however, need to give further consideration to the extent to which recommendation 11-1 can be applied to all types of appeals listed because section 79(1) of the TCPA 1990 only applies to certain appeals under section 78 of the Act. Also, by way of example, section 79(1) is applied with modifications to appeals against advertisement discontinuance notices. Our future programme of work to review whether or not the various consenting regimes that overlap or are linked with planning permission can be included in a more integrated and streamlined approach (as identified in our response to recommendations 13-1(A), 13-1(B), 14-7 and 15-5) may result in the need for future changes to their related appeals procedures. This means the approach to appeals relating to listed building consent, conservation area consent, display of advertisement consent and consent for carrying out of works to protected trees may need further changes in light of any conclusions resulting from the future review.
11-5	We recommend that the Bill should provide that, in a case where there has been an appeal to the Welsh Ministers, the period within which a purchase notice can be served runs from the date of the decision of the Welsh Ministers on the appeal.	Accept	The Welsh Government agrees with the Law Commission's view that the existing legislation is not clear on whether the 12 month period in which a purchase notice must be served begins on the date of the relevant PAs decision or that of the Welsh Ministers' decision, where a planning application is the subject of an appeal under section 78 of the TCPA 1990. It is also sensible that, in such cases, the 12 month period should begin on the date of the Welsh Ministers' appeal decision. Such an amendment will clarify the law and provide users and operators of the system with greater certainty in the process. The 12 month period is currently prescribed in the Town and Country Planning General Regulations 1992 ("the 1992 Regulations") and we consider it should be retained in regulations. Therefore the proposed amendment to clarify the date when the 12 months begins to run where a planning application is the subject of an appeal under section 78, will be made to the 1992 Regulations This amendment will be considered further when the 1992 Regulations are next reviewed.

11-6	We recommend that the Bill should clarify that a purchase notice may not be amended, but that a second or subsequent notice served in relation to a single decision should be deemed to supersede any earlier such notice.	Accept in principle	The Welsh Government has clarified with the Law Commission that this recommendation was intended to provide that the Herefordshire Council v White case should be codified as far as possible. The Welsh Government agrees with the principle of seeking to codify the case. The extent to which this can be achieved and how it is achieved will be considered during the course of drafting.
11-7	We recommend that the powers currently in section 247, 248, 253 to 257 of the TCPA 1990 (relating to highways affected by development) should be restated in the Planning Bill, but those in section 116, 118 and 119 of the Highways Act 1980 should not.	Accept	The Welsh Government agrees with the recommendation and the views of the majority of respondents to the consultation that the relevant sections of the Highways Act 1980 associated with the stopping up or diversion of highways should not be integrated. These provisions perform substantially different functions and procedures, which need to be retained in order to maintain the flexibility they provide to those who wish to pursue such orders – maintaining the ability to choose the most appropriate approach to meet their circumstance. Therefore, the relevant sections in the TCPA 1990 will be restated in the consolidation Bill with those in the Highway Act 1980 remaining unaffected.
11-8	We recommend that sections 249 and 250 of the TCPA 1990 (relating to orders extinguishing the right to use vehicles on a highway, in conjunction with a proposal for the improvement of the amenity of an area) should not be restated in the Bill, in view of the parallel provisions in section 1 of the Road Traffic Regulation Act 1984.	Accept	The Welsh Government shares the view that there is significant overlap between these provisions and those contained in the Road Traffic Regulation Act 1984. As highlighted in the consultation paper there does not appear to be any circumstances in which it would be possible to use the power under the TCPA 1990 that could not also be dealt with under the Road Traffic Regulation Act 1984. In addition, powers under the Road Traffic Regulation Act 1984 need to be retained over those contained in the TCPA 1990 in order to maintain the important relationship with the Active Travel (Wales) Act 2013. Their retention is also important given that the powers are used more frequently since no compensation is payable for the making of an order under the Road Traffic Regulation Act 1984, unlike under the TCPA 1990. Given the duplicative nature of the powers in both Acts and the greater importance of those contained in the Road Traffic Regulation Act 1984, the Welsh Government agrees with the recommendation that sections 249 and 250 of the TCPA 1990 is not required and should not be restated in the consolidation Bill.

11-9	We recommend that decisions relating to orders under section 252 and Schedule 14 of the TCPA 1990 should generally be made by inspectors rather than by the Welsh Ministers, subject to a power for them to make a direction to recover a particular case for their decision.	Reject	Currently, Inspectors have a limited role in the process in relation to the making of highway orders made under section 252 and confirmation of orders covered by the procedure in Schedule 14 of the TCPA 1990. Their involvement only extends to objections received to the making of Orders that cannot be resolved through negotiation. In such instances, the Welsh Ministers can instigate a public inquiry into the objections raised, which an Inspector conducts the inquiry on behalf of the Welsh Ministers. Once the inquiry has concluded, the Inspector will make recommendations to the Welsh Ministers for their consideration in determining whether or not the Order should be made. The making of the Order and associated administrative processes is then undertaken by Welsh Government officials. Where a public inquiry is not required, the entire processes is undertaken by the Welsh Government, with no involvement from Inspectors. This replicates the process for all Highways Act Orders, Traffic Regulation Orders and Emergency Notices. Based on the current procedure, which is consistent with the process of making highway and traffic related orders and notices under other legislation and the limited role of Inspectors in it, the Welsh Government does not believe there is sufficient justification or benefit in transferring this decision making function to Inspectors.

Chapter 12 - Unauthorised development

No.	Recommendation	Welsh Government Response	Comments
12-1	We recommend that the provisions currently in sections 171C and 330 of the TCPA 1990 should be combined into a single power for the Welsh Ministers or a planning authority to serve a "planning information order" (or "planning information notice") on anyone who owns or occupies the land, anyone who has an interest in it, any person who is carrying out operations or other activities on the land or is using it for any purpose, and anyone who is authorised to manage it. The power should be exercisable where the Welsh Ministers or the authority believe that there may have been a breach of planning control, or where the information is needed to make any order, issue, or to serve a notice or any other document under the Act. The order-making power should include the features mentioned in section 171C(3) (information required to be supplied) and 171C(4) (offer of a meeting to discuss); and where it is believed that there may have been a breach of control, the order must contain the information specified in section 171C(5) (as to possible enforcement action).	Accept in principle	The Welsh Government agrees with the principle that a single power to derive information may make the legislation more accessible and provide clarity. However, the Welsh Government wish to give detailed consideration to whether combining section 171C and section 330 would result in more accessible legislation when it may not be possible to combine other investigatory powers (such as powers of entry) and some provisions may only be appropriate for enforcement cases. We will also give consideration to whether the persons on whom the notice can be served should be amended to include any persons authorised to manage the land as in section 16 of the Local Government (Miscellaneous Provisions) Act 1976. If this recommendation is implemented, consideration will also be given to the name of the notice suggested in the recommendation at the time of drafting the consolidation Bill.
12-2	We recommend that the restriction on entering property for enforcement purposes only after giving 24 hours' notice, currently in section 196A(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to any property in use as a dwelling.	Accept	The Welsh Government considers this amendment to section 196A (4) will improve the accessibility of legislation. As explained in our response to Recommendation 18-15(1), the Welsh Government agrees the term "dwellinghouse" should be replaced with "dwelling" in the consolidation Bill, as it represents a more commonly understood and encountered term.
12-3	We recommend that: 1) Welsh Government guidance should draw clear attention to the common law principle highlighted in Welwyn Hatfield Council v Secretary of State [2010] UKSC 15, [2011] 2 AC 304; and 2) the "planning enforcement order" procedure, introduced in England by the Localism Act 2011, should not be included in the Bill.	Accept	The Welsh Government notes and agrees with the views of the Law Commission and respondents that the planning enforcement order procedure should not be introduced in Wales given the number of issues identified with the procedure. We believe it is sensible for Planning Authorities (PAs) to rely on the principle that derive from the Welwyn Hatfield Council v Secretary of State case in appropriate cases and agree with the Law Commission's view and rationale for why this single case should not be codified in statue. The Development Management Manual will be updated to include guidance on this principle to give PAs greater confidence when dealing with concealment.
12-4	We recommend that section 173ZA of the TCPA 1990 should be restated in an amended form such that, where an enforcement warning notice has been issued, the period for taking other enforcement action starts on the date on which the notice was served, but that the time limit cannot be extended further by the issuing of additional enforcement warning notices in relation to the same matter.	Accept	The Welsh Government agrees that it should not be possible to repeatedly extend the period for taking enforcement action by issuing further enforcement warning notices. The precise wording to be used in the Bill will require careful consideration. An enforcement warning notice should in most cases be followed up with either the submission of a planning application (and the subsequent granting of planning permission subject to conditions to resolve the breach of control), or the serving of an Enforcement Notice should an application not be forthcoming. The removal of the ability to extend the period for taking enforcement action more than once will focus the attention of PAs on ensuring either of these actions are undertaken.

12-5	We recommend that the restriction on issuing a temporary stop notice, currently in section 171F(1)(a) of the TCPA 1990, should be clarified to ensure that it applies in relation to any dwelling.	Accept	The Welsh Government agrees the recommended amendment to section 171F(1)(a) will improve the accessibility of legislation. As explained in response to Recommendation 18-15(1), and as mentioned in response to Recommendation 12-2, the Welsh Government agrees the term “dwellinghouse” should be replaced with “dwelling” in the consolidation Bill, as it represents a more commonly understood and encountered term.
12-6	We recommend that: 1) a temporary stop notice (TSN) should come into effect at the time and date stated in it, which will normally be when a notice is displayed on the land in question; 2) it should then remain in effect for 28 full days (starting at the beginning of the day after the day on which it is displayed); 3) the notice to be displayed on the land, as near as possible to the place at which the activity to which it relates is occurring, should: o state that a TSN has been issued; o summarise the effect of the TSN; and o state the address (and, if applicable, the website) at which a full copy of the TSN can be inspected; 4) the authority should have a power (but not a duty) to serve copies of the TSN on the owner and occupier of the land and on others as may seem appropriate; and 5) Welsh Government guidance should emphasise that, following the display of the notice, copies of the TSN should be served within a reasonable time on the owner and occupier of the land, if either are known to the planning authority.	12-6 (1) and (2) Accept in Principle 12-6(3) –(5) Accept	The Welsh Government agrees with the recommended amendments to provisions in relation to Temporary Stop Notices (TSNs). The amendments will provide clarity about when a TSN comes into force. Amending the provisions so that TSNs come into effect at the time and date stated in them will also provide consistency across the enforcement system in respect of when other notices issued as part of the enforcement process come into effect. The precise wording that should be used in the Bill will require careful consideration particularly in relation to the date when a TSN will normally come into effect. Discussions with the Law Commission have clarified that Recommendation 12-6(4) is intended to preserve the current legal position. We agree with the Law Commission that PAs should continue to have a power (but not a duty) to serve copies of the TSN. Guidance should advise that notice is given to both the owner and occupier where known so they are alerted as early as possible to its existence but a PA’s inability to do so will not undermine the effectiveness of the notice. We therefore support the view that guidance is needed to support these amendments after they are made. The comments from a PA regarding extending the period for which a TSN can be in force beyond 28 days are also noted. However, the basic principle of a TSN is that it is only to be used when it is expedient that unauthorised development should be stopped immediately. It is a tool intended to cease unauthorised activity and provide PA time to prepare their enforcement case. 28 days is considered a sufficient period for a PA to arrange an effective enforcement response.
12-7	We recommend that: 1) it should be an offence to contravene a temporary stop notice that has come into effect (rather than, as at present, one that has been served on the accused or displayed on the site); 2) it should be a defence to a charge of such an offence to prove that the accused o had not been served with a copy of the notice; and o did not know, and could not reasonably have been expected to know, of the existence of the notice.	12-7(1) - Accept 12-7(2) Accept in principle	The Welsh Government agrees with the recommended approach in the first part of this recommendation to when an offence has been committed under section 171G. This will provide clarity, especially when multiple copies of a TSN have been served. Together with Recommendation 12-18(1), these amendments will provide consistency across the enforcement system. Following discussions with the Law Commission we have clarified that there is a potential inconsistency between Recommendations 12-7(2), 12-18(2), 12-21 and 15-16. We wish to ensure that, as far as possible, there is consistency between similar provisions (such as the offences of contravening tree preservations regulations, a stop notice and an enforcement notice). Therefore the approach to be adopted will require careful consideration during the course of drafting.
12-8	We recommend that the provisions relating to breach of condition notices, currently in section 187A of the TCPA 1990, should be restated in an amended form such that a notice is to be “issued”, to come into force on the date stated in it, with copies being served on those apparently responsible for the breach (rather than, as present, a separate notice being served on each such person,	Accept	The Welsh Government agrees it is beneficial to have consistency across the enforcement system with notices being issued to come into force on a date stated in them and copies served. The precise wording that should be used in the Bill in relation to breach of condition notices will require careful consideration alongside other similar provisions.

	coming into force on a date specified by reference to the date of service).		
12-9	We recommend that section 173(4) of the TCPA 1990 should be restated in an amended form to make it clear that a local authority can require steps to be taken in respect of both of the specified purposes, as set out in Oxfordshire CC v Wyatt Bros (Oxford) Ltd [2005] EWHC 2402 (QB).	Accept	The Welsh Government agrees it should be clear on the face of the Bill that local authorities can require steps to be taken to meet both of the purposes specified in section 173(4) as provided for in case law. This will provide clarity about the requirements that can be specified in an enforcement notice.
12-10	We recommend that there should be an explicit provision in the Bill, incorporating the principle in Murfitt v Secretary of State (1980) 40 P&CR 254 and Bowring v Secretary of State [2013] JPL 1417 to the effect that, where an enforcement notice is served alleging the making of a material change of use of land, the notice may require that certain works be removed in addition to the cessation of the unauthorised use, provided that those works were carried out at or after the time of the making of the material change of use and were integral to the making of the change or the subsequent operation of the new use.	Accept in principle	The Welsh Government agrees in principle with codifying the principle established in the Murfitt and subsequent cases. However, the extent to which the principle can be set out clearly will require further consideration. If the principle is codified how this is best achieved will be considered during the drafting of the consolidation Bill.
12-11	We recommend that Welsh Government guidance should include guidance as to the implications of the principle in Mansi v Elstree RDC (1964) 16 P&CR 153 to the effect that an enforcement notice does not restrict the rights of any person to carry out without a planning application any development that could have been carried out lawfully immediately prior to the issue of the notice.	Accept	The Welsh Government agrees with the recommendation. We agree with respondents to the consultation paper that including a statement in an enforcement notice could result in confusion. We agree with the Law Commission's view that advice resulting from the Mansi case is best placed in guidance. This will be included when we review and update our guidance on the enforcement system.
12-12	We recommend that that the Bill: 1) should omit section 177(5) and (6) of the TCPA 1990, relating to the application for planning permission deemed to have been made by an appellant relying on ground (a) in section 174(2) (permission ought to be granted for any matter stated in the enforcement notice as constituting a breach of control); and 2) should provide instead that the Welsh Ministers, on determining an appeal under section 174, may do all or any of the following: ○ in relation to any of the matters that form the basis of an appeal under ground (a), grant planning permission or discharge any condition or limitation that is alleged to have been breached; ○ in relation to any of the matters that form the basis of an appeal under grounds (c) or (d), issue a certificate of lawfulness, insofar as they determine that those matters were in fact lawful.	12-12(1) – Accept 12-12(2) - Accept in principle	The Welsh Government agrees with Part (1) of the recommendation. The omission of section 177(5) and (6) will result in the simplification of the appeals process. The concept of a deemed application is not widely understood by many stakeholders in particular members of the public, and is unnecessary given the powers in section 177(1)(a) to grant planning permission in relation to an appeal against an enforcement notice. This will provide clarity and simplification for stakeholders in respect of understanding the potential outcome of any appeal made under ground (a). Such an amendment would not alter the current policy effect, as any successful appeal made under ground (a) would still result in the development becoming authorised. During the drafting of the Bill it will also be necessary to consider if changes need to be made to other provisions which refer to deemed applications in order to ensure that the current legal position is retained. We also agree, in principle, with the proposed amendments to the actions the Welsh Ministers can take in determining an appeal under section 174, set out in Part (2) of the recommendation. At present the only limitation on the action the Welsh Ministers can take in determining an enforcement appeal is that they are only able to grant planning permission where there is a ground (a) appeal. The Welsh Ministers can currently discharge conditions or limitations associated with a planning permission and issue a certificate of lawfulness where there is an appeal on any ground. The proposed change will maintain the ability of the Welsh Ministers to grant planning permission where there is a ground (a) appeal, but will make it clear that the Welsh Ministers can only discharge any conditions and limitations associated with planning permission where an appeal is allowed under ground (a). It will also make clear that a certificate

			of lawfulness can only be issued where an enforcement appeal is allowed on grounds (c) and (d). In response to representations made by the Planning Inspectorate Wales, Part (2) of this recommendation would also limit the scope of the Welsh Ministers on determining an appeal that includes ground (a) to those elements of the alleged breach, which are the subject of the ground (a) appeal, rather than any or all of the matters alleged in the enforcement notice. This would avoid the need to consider the planning merits of any matters alleged in the enforcement notice, which have not been raised by the appellant. The Law Commission have suggested that appeals under grounds (c) and (d) should be treated in the same way. We agree in principle with the proposed changes set out in Part (2) of the recommendation, however, we wish to ensure the suggested amendments do not remove the flexibility of the Welsh Ministers to allow an appeal on a ground different to the one which formed the basis of the appeal. Further evidence is required to ensure the process remains fair for both appellants and PAs, and enables the Welsh Ministers to allow an appeal on the correct ground should it be different to the basis of the appeal contained in the appellant's submission.
12-13	We recommend that ground (e) on which an appeal can be made against an enforcement notice (under section 174 of the TCPA 1990) should refer to copies of the notice not having been served as required by the provision restating section 172(2) (which refers to service on owners and occupiers etc.) rather than as required by the provision restating section 172 as a whole (which also refers to time limits for service).	Accept	The Welsh Government accepts the wording in the consolidation Bill should match the meaning it was given in *R (Stern) v Horsham DC.* How this is best achieved will require careful consideration during its drafting.
12-14	We recommend that section 174(4) of the TCPA 1990 (requirements as to the statement to be submitted with appeal against an enforcement notice) should be amended so that it does not duplicate the requirements of the relevant secondary legislation.	Accept	The Welsh Government accepts the recommendation of removing duplication. The precise wording to be used in the Bill, including any consequential amendments, will require careful consideration.
12-15	We recommend that there should be included in the part of the Bill dealing with enforcement a provision equivalent to section 285(1) and (2) of the TCPA 1990, to the effect that an enforcement notice is not to be challenged, other than by way of an appeal to the Welsh Ministers, on any of the grounds on which such an appeal could have been brought.	Accept	The Welsh Government agrees with the recommendation to retain provisions equivalent to section 285(1) and (2) of the Town and Country Planning Act 1990 (TCPA 1990) and that these provisions should be moved to the part of the Bill dealing with enforcement. The precise wording to be used will be considered during the drafting of the Bill and will be considered with Recommendation 17-1 relating to provisions in Part 12 of the TCPA 1990 (challenges in the High Court to the validity of actions and decisions under the Act).
12-16	We recommend that the restriction on issuing a stop notice, currently in section 183(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to any building in use as a dwelling.	Accept	The Welsh Government agrees the recommended amendment to section 183(4) will improve the accessibility of legislation. As explained in response to Recommendation 18-15(1), and as mentioned in response to Recommendations 12-2 and 12-5, the Welsh Government agrees the term "dwellinghouse" should be replaced with "dwelling" in the consolidation Bill, as it represents a more commonly understood and encountered term.

12-17	We recommend that the provisions relating to stop notices, currently in section 184 of the TCPA 1990, should be restated in an amended form such that a notice is to be "issued", to come into force on the date stated in it, with copies being served on those apparently responsible for the breach of control (rather than, as present, a separate notice being served on each such person, coming into force on a date specified by reference to the date of service); and where a notice is to be displayed on the land, it is to be as close as reasonably possible to the location at which the offending activity is occurring.	Accept	The Welsh Government agrees with the recommended amendment. Together with Recommendation 12-6 and 12-8, these amendments will provide consistency across the enforcement system in respect of the terminology used and when notices issued come into force. The precise wording to be used in the Bill in relation to stop notices will require careful consideration alongside other similar provisions.
12-18	We recommend that: 1) it should be an offence to contravene a stop notice that has come into effect; and 2) it should be a defence to a charge of such an offence to prove that the accused o had not been served with a copy of the stop notice, and o did not know, and could not reasonably have been expected to know, of the existence of the notice.	12-18(1) – Accept 12-18(2) – Accept in principle	The Welsh Government agrees with the recommended approach in the first part of this recommendation to when an offence has been committed under section 187. This will provide clarity, especially when multiple copies of a stop notice have been served. Together with Recommendation 12-7(1), these amendments will provide consistency across the enforcement system. As mentioned in relation to Recommendation 12-7(2), we have clarified with the Law Commission that there is a potential inconsistency between Recommendations 12-7(2), 12-18(2), 12-21 and 15-16. We wish to ensure that, as far as possible, there is consistency between similar provisions (such as the offences of contravening tree preservations regulations, a stop notice and an enforcement notice). Therefore the approach to be adopted will require careful consideration during the course of drafting.
12-19	We recommend that: 1) where a planning authority decides to withdraw a stop notice, the notice should cease to have effect immediately; and 2) such a decision should be publicised as soon as possible after it has been made: o by the notification of all those who were notified of the original notice, and o where the original notice was publicised by a site notice, by the display of another such notice, at the same location.	Accept	This is a practical approach. Once a PA has made the decision to withdraw a stop notice, it no longer has any effect in practice and should therefore also have no legal effect.
12-20	We recommend that where an enforcement notice is served by the Welsh Ministers under the provision restating section 182 of the TCPA 1990, and a stop notice is served by them under the provision restating section 185, and the stop notice is subsequently quashed, any liability to compensation arising under section 186 should be payable by them and not by the planning authority.	Accept in principle	The Welsh Government agree with the principle that if compensation is payable where the Welsh Ministers have made a decision to undertake enforcement action and have issued the enforcement notice and stop notice the Welsh Ministers should pay any such compensation. Whether that requires amendment to legislation or can be achieved through an alternative route will be fully considered as part of preparation of the Bill. The Welsh Government also agrees with the Law Commission that in the situation where the enforcement notice was served by the PA, they should remain liable as is currently the case.

12-21	We recommend that: 1) the offences under section 179(2) (breach of an enforcement notice) and section 179(5) (subsequent resumption of prohibited activity) should each be reframed so as to provide that a person commits an offence if the person is in breach of an enforcement notice, and o the notice was at the time of the breach contained in the relevant register; or o the person was aware of the notice, through service of a copy or otherwise. 2) the relevant regulations should include, alongside the requirement to include an enforcement notice in the register, a further requirement to record the date on which it was first included. 3) Welsh Government guidance should advise users of the planning system to consult the enforcement register before undertaking activities on land that may be subject to planning control, and provide clear directions on how to do this.	12-21(1) – Accept in principle 12-21(2) and (3) - Accept	The Welsh Government agrees with the principle of the first part of this recommendation. The issues raised are similar to those raised by Recommendation 15-16. We note that the provisional proposal in the Consultation Paper has been revised in light of comments received from respondents. As with Recommendation 15-16, we agree in principle with reframing the offence but wish to ensure that, as far as possible, there is consistency between similar provisions (such as the offences of contravening a temporary stop notice, stop notice and tree preservation regulations). Therefore the approach to be adopted will require careful consideration during the drafting of the Bill. The Welsh Government also agrees with the proposed amendment to the relevant statutory instrument and the Development Management Manual will be updated to include advice on consulting the enforcement register. These suggested improvement to relevant statutory instrument and guidance will form part of a future programme of work.
12-22	We recommend that section 172A of the TCPA 1990 (assurances as to non-prosecution for breach of an enforcement notice) should be amended so as to enable an authority: 1) to give such an assurance simply by giving written notice, as defined in section 329 of the TCPA 1990, to the relevant person rather than necessarily doing so by a hardcopy letter; and 2) to give in response to a request from person (B), who acquires an interest in land following the issue of an enforcement notice relating to the land, an assurance explaining that, once the enforcement notice had been issued, the authority was required to serve a copy of it on a person (A) from whom B had acquired the interest in the land.	Accept	The Welsh Government agrees with the modernisation of this provision to provide PAs with greater flexibility when providing assurance as to non-prosecution. The proposed legislative change would then be supported by guidance on the use of emails when notices under this provision are given. The Welsh Government also agrees that a PA should be able to give an assurance to an owner who acquired their interest in land after an enforcement notice had already been served. The precise wording to be used to give effect to Recommendation 12-22 will require careful consideration during the drafting of the consolidation Bill.
12-23	We recommend that section 180(1) of the TCPA 1990 (relating to the effect on an enforcement notice of a subsequent grant of planning permission) should be restated in an amended form so as to refer: 1) to the grant of planning permission following the issue of an enforcement notice or a breach of condition notice, rather than following the service of a copy of the notice; and 2) to the grant of planning permission generally for development already carried out; and 3) to the grant of planning permission for other development, once that permission has been implemented.	Accept	The Welsh Government agrees with the recommendation which will provide clarity that an enforcement or breach of condition notice ceases to have effect where it is inconsistent with planning permission granted for development that has already been carried out, or planning permission for future development once that development is begun. The precise wording to be used will require careful consideration as the consolidation Bill evolves.

12-24	We recommend that offences of supplying false information in response to a request from a planning authority, currently under sections 65(6), 171D(5), 194(1) and 330(5) of the TCPA 1990, should – in the case offences committed on or after the date of the enactment of the Bill – all be triable either summarily (in the magistrates' court) or on indictment (in the Crown Court), and that the maximum penalty in each case should be in either case a fine of any amount.	Accept in principle	The Welsh Government agrees with the principle of achieving greater consistency between these offences and, where appropriate, others set out under the TCPA 1990. We agree the possibility of imprisonment upon conviction of an offence for knowingly providing false information to obtain a certificate of lawful development under section 194, and to a request for information made by the Welsh Ministers or a PA under section 303 (power to require information as to interests in land) is unnecessary and should be removed. The possibility of an unlimited fine in our view provides sufficient deterrent and punishment if found guilty of these offences. We note the Law Commission's view that in some instances offences for knowingly providing false information under section 65(6) (notice of application for planning permission) and section 171D(5) (penalties for non-compliance with planning contravention notice) may need to be considered and decided by the Crown Court. We agree that making these offences triable either by Magistrates' Court or by the Crown Court provides greater flexibility for complex cases to be referred for consideration and determination by the Crown Court. However, we will need to establish and consider in detail any additional cost associated with introducing this change. This will be considered and balanced against the benefits identified by the Law Commission as part of the Judicial Impact Assessment that we will undertake to accompany a future Bill.
12-25	We recommend that the offences of 1) reinstating or restoring buildings or works following compliance with an enforcement notice (under the provision restating section 181(5) of the TCPA 1990); and 2) failing to comply with a breach of condition notice (under the provision restating section 187A(9)) should, in the case offences committed on or after the date of the enactment of the Bill, both be triable either summarily or on indictment, and punishable in either case by a fine of any amount, to bring them into line with the penalties for other breaches of planning enforcement notices under the TCPA 1990.	Accept in principle	The Welsh Government agrees with the principle of achieving greater consistency between these two offences and the remaining offences for the breach of other planning enforcement notices under the TCPA 1990. We note the Law Commission's view that both offences should also be triable either by Magistrates' Court or by the Crown Court. We agree this will ensure a consistent approach is achieved across all offences relating to the breach of planning enforcement notices. It will also provide greater flexibility for complex cases to be referred for consideration and determination by the Crown Court. However, as highlighted in our response to the previous recommendation, we will need to establish and consider in detail any additional cost associated with introducing this change. This will be considered and balanced against the benefits identified by the Law Commission as part of the Judicial Impact Assessment that we will undertake to accompany a future Bill. We support the aspect of the recommendation that proposes increasing the penalty for failing to comply with a breach of condition notice under section 187A to a maximum penalty of an unlimited fine. We believe such a change will provide the Courts with the ability to deliver appropriate financial penalties where the impact of the offence in breaching this enforcement notice is significant and act as a greater deterrent.
12-26	We recommend that sections 57(7), 302 of and Schedules 4 and 15 to the TCPA 1990, relating to historic breaches of planning control, should not be restated in the Code.	Accept	The Welsh Government agrees that both provisions are redundant and should therefore not be included in the consolidation Bill.

Chapter 13 - Works affecting listed buildings and conservation areas

No.	Recommendation	Welsh Government Response	Comments
13-1A	We recommend that the control of works to listed buildings should be simplified by: 1) amending the definition of "development", for which planning permission is required, to include the carrying out of works for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; 2) providing that planning permission is not required for works to: o the interior of an ecclesiastical building in ecclesiastical use by one of the exempt denominations; or o a scheduled monument. 3) ensuring that the carrying out without permission of works for the demolition of a listed building, or for its alteration or extension in any manner likely to affect its character as a building of special architectural or historic interest, remains a criminal offence; 4) removing the requirement for listed building consent to be obtained for works to a listed building; and 5) implementing the additional measures outlined in Recommendations 13-2, 13-3 and 13-5 to 13-8, to ensure that the existing level of protection for listed buildings is maintained.	Supporting evidence for further consideration	We note the strong differences in opinion expressed by respondents. Some respondents consider the proposal to unify listed building consent and planning permission as a positive proposal, which will lead to simplification without the loss of the existing protections afforded to listed buildings. Other respondents disagree, perceiving this recommendation as devaluing listed buildings. We also note responses stating that this proposal will require significant changes in legislation which would only simplify the procedure for a small portion of applications. Furthermore, while the rationale behind the recommendation is to remove and avoid duplication of procedures, a number of responses considered it did not amount to a substantial issue in practice and arose infrequently. Listed building consents are one of a number of other (sometimes overlapping) statutory consents which are required to be obtained alongside planning permission. This can be confusing and generates uncertainty for both applicants and communities. The Welsh Government proposes a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. We note the Law Commission's view and recommendation regarding listed building consents, as well as the responses received, which will form an evidence base to inform such a review.
13-1B	We recommend that the control of demolition in conservation areas should be simplified by: 1) removing the requirement for conservation area consent to be obtained for the demolition of an unlisted building in a conservation area; 2) ensuring that the carrying out without planning permission of works for the demolition of an unlisted building in a conservation area, remains a criminal offence; and 3) implementing the additional measures outlined in Recommendations 13-6 to 13-8, to ensure that the existing level of protection for unlisted buildings in a conservation area would be maintained.	Supporting evidence for further consideration	We note the recommendation relating to conservation area consent received greater support than the unification of listed building consent and planning permission. Some responses acknowledged similar reforms have been undertaken in England and have proven successful. Equally, we note similar arguments have been made against this recommendation to the arguments put forward opposing the unification of listed building consent and planning permission. Conservation area consents are one of a number of other (sometimes overlapping) statutory consents which are required to be obtained alongside planning permission. This can be confusing and generates uncertainty for both applicants and communities. The Welsh Government proposes a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. We note the Law Commission's view and recommendation regarding conservation area consents, as well as the responses received, which will form an evidence base to inform such a review.

13-2	We recommend that the power to make general and local development orders should be limited so that they may not grant permission for development consisting of 1) the demolition, alteration, or extension of a listed building; 2) the carrying out of any operational development in the curtilage of a listed building; or 3) the construction, rebuilding or alteration a gate, fence or wall bounding the curtilage of a listed building.	Supporting evidence for further consideration	We note the recommendation that general and local development orders should not be able to permit development consisting of works for the demolition, alteration or extension of a listed building or works in its curtilage (including the construction or alteration of a boundary wall). This seeks to preserve the effect of the existing protection afforded through Chapter 2 of Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the exclusion of certain works which would otherwise be permitted by the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO"). It would offer further protection by preventing permitted development rights being granted in relation to some operational development in the curtilage of listed buildings which is currently permitted by the GPDO. This recommendation is consequential on Recommendation 13-1A. As consideration of Recommendation 13-1A has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendation 13-1A be progressed.
13-3	We recommend that heritage partnership agreements should be capable of granting planning permission for development in such categories as may be prescribed.	Supporting evidence for further consideration	Section 26L was inserted into the Planning (Listed Buildings and Conservation Areas) Act 1990 by section 28 of the Historic Environment (Wales) Act 2016. When fully commenced this section will enable listed building consent to be automatically granted for works specified in a heritage partnership agreement ("HPA"). A HPA may not, however, grant planning permission. The recommendation if implemented would permit a HPA to grant planning permission for types of development which were prescribed. This recommendation is consequential on Recommendation 13-1A. As consideration of Recommendation 13-1A has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendation 13-1A be progressed.
13-4	Regardless of whether planning permission is unified with listed building consent and conservation area consent, we recommend that the provisions (currently in sections 191 and 192 of the TCPA 1990) relating to certificates of lawfulness should be extended to include works that currently require only such consent.	Supporting evidence for further consideration	Any proposal to extend certificates of lawfulness to include works which currently require only listed building consent or conservation area consent sits in historic environment legislation. Certificates of lawfulness in the context of listed building and conservation area consents were first considered as part of the development of the Historic Environment (Wales) Act 2016. At the time there was neither sufficient support nor compelling evidence of their need. We note the responses received which suggest certificates in relation to proposed works might be useful in the context of listed building and conservation area consents. Such certificates may curtail the need to apply for listed building or conservation area consent for works where prospective applicants are not certain whether the works affect the character of a listed building or do not amount to demolition in a conservation area. The objective of certificates of lawfulness of proposed use or development is to provide certainty for owners or occupiers by determining whether a (proposed) development would indeed require planning permission and extending this certainty to listed buildings and conservation areas could aid those owners and occupiers. We also acknowledge issues raised by respondents surrounding the practicality of introducing certificates of lawfulness in relation to proposed works and works already carried out. For example, the level of information and scrutiny required as part of an application, particularly given carrying out works without consent is a criminal offence.

			Further consideration will be required in respect of how the recommendation could be implemented and whether it is indeed feasible.
13-5	We recommend that the Bill should include provisions to the effect that: 1) any appeal relating to works to a listed building may contain as a ground of appeal that the building in question is not of special architectural or historic interest, and ought to be removed from the list of such buildings maintained by the Welsh Ministers; 2) where a building is subject to a building preservation notice (provisional listing), the notice of appeal may contain a claim that the building should not be included in the list; 3) the Welsh Ministers, in determining an appeal relating to a listed building, may exercise their powers to remove the building from the list; and 4) in determining an appeal relating to a building subject to a building preservation order, they may state that they do not intend to include it in the list.	Supporting evidence for further consideration	This recommendation is consequential on Recommendation 13-1A. It mainly seeks to preserve the current legal position by recommending provisions equivalent to those now applying in the case of listed building consent appeals (as currently set out in sections 21 and 22 of the Planning (Listed Buildings and Conservation Areas) Act 1990) are included in any Bill providing for the unification of listed building consent and planning permission. As consideration of Recommendation 13-1A has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendation 13-1A be progressed.
13-6	We recommend that the Bill should include provisions to the effect that: 1) it is an offence to carry out without planning permission works for o the demolition of a listed building; o for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; or o the demolition of an unlisted building in a conservation area; 2) such an offence is punishable: o on summary conviction by imprisonment for a term not exceeding six months or a fine or both; or o on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both; and 3) the defence to a charge of such an offence is the same as currently applies in relation to a charge of carrying out works without listed building consent.	Supporting evidence for further consideration	This recommendation is consequential on Recommendations 13-1A and B. It seeks to ensure that unauthorised works to listed buildings and demolition of an unlisted building in a conservation area remain a criminal offence on the same basis as set out in section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (including that section as applied by section 74(3)). As consideration of Recommendations 13-1A and B has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendations 13-1A and B be progressed.

13-7	We recommend that the Bill should include provisions to the effect that the categories of development that are subject to time limits as to the period within which enforcement action may be taken exclude works for: 1) the demolition of a listed building; 2) for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; and 3) the demolition of an unlisted building in a conservation area.	Supporting evidence for further consideration	This recommendation is consequential on Recommendations 13-1A and B. It seeks to ensure the effect of existing law does not change as a result of the unification of listed building/conservation area consents and planning permission where it concerns enforcement action in respect of unauthorised works to listed buildings and in conservation areas. It does so by recommending there are no time periods for taking such enforcement action in any Bill providing for the unification of listed building / conservation area consents and planning permission. As consideration of Recommendations 13-1A and B has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendations 13-1A and B be progressed.
13-8	We recommend that the Bill should include provisions to the effect that: 1) where an enforcement notice is issued in relation to the carrying out of works for o the demolition of a listed building; or o for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; the grounds on which an appeal may be made against such a notice include grounds equivalent to grounds (a), (d), (i), (j) and (k) as set out in Section 39 of the Listed Buildings Act 1990; 2) where an enforcement notice is issued in relation to the carrying out of works for the demolition of an unlisted building in a conservation area, the grounds on which an appeal may be made against such a notice include grounds equivalent to grounds (a), (d), (j) and (k) as set out in Section 39 of that Act, as amended by SI 2012/793; 3) the Welsh Ministers, in determining an enforcement appeal relating to a listed building, may exercise their powers to remove the building from the list. 4) in determining an enforcement appeal relating to a building subject to a building preservation order, they may state that they do not intend to include it in the list.	Supporting evidence for further consideration	This recommendation is consequential on Recommendations 13-1A and B. It seeks to ensure the effect of existing law does not change as a result of the proposed unification of listed building / conservation area consents and planning permission where it concerns appeals against enforcement notices. It does so by recommending the grounds on which an appeal may currently be made against a listed building and conservation area enforcement notice are included in any Bill providing for the unification of listed building/conservation area consents and planning permission. It also broadly seeks to preserve the Welsh Ministers' powers in determining such appeals. As consideration of Recommendations 13-1A and B has been deferred to form part of a wider review of statutory consents which directly overlap or are linked with planning permission, we will consider this recommendation further should this wider review conclude Recommendations 13-1A and B be progressed.
13-9	We recommend that scheduled monument consent should not be replaced by planning permission.	Supporting evidence for further consideration	We note there was a strong response in support of this recommendation. Responses supporting the recommendation noted unifying scheduled monument consent and planning permission is unlikely to be practical. Currently, scheduled monument consent applications are administered by Cadw and determined by the Welsh Ministers. Planning authorities (PAs) do not usually hold specific expertise in relation to archaeology. Cadw have established a small team of experts to handle the relatively small number of scheduled monument consent applications received annually in Wales. The responses note dispersing these applications and subsequent expertise to PAs would not be efficient either financially or administratively.

			Some respondents questioned whether scheduled monuments should be treated differently to listed buildings. It was noted expertise on scheduled monuments could be provided through the statutory consultee route, in the same vein as other complex consents which require specialist expertise. The Welsh Government proposes a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. We note the Law Commission's view and recommendation regarding scheduled monument consents, as well as the responses received, which will form an evidence base to inform such a review.
13-10	We recommend that the definition of "listed building" should be clarified by making plain that it includes pre-1948 objects and structures if they were within the curtilage of the building in the list as it was 1) in the case of a building listed prior to 1 January 1969, at that date; or 2) in any other case, at the date on which it was first included in the list.	Accept in principle	The Welsh Government accepts the principle of providing clarity in relation to the date at which the extent of the curtilage of a listed building should be assessed. However, we consider the precise definition will require further consideration, this work will be undertaken as part of any future consolidation or reform of the principal historic environment Acts.
13-11	We recommend that the Ancient Monuments and Archaeological Areas Act 1979 should be amended so that Part 2 (areas of archaeological interest) does not apply in Wales.	Accept in principle	The Welsh Government accepts the principle of revoking Part 2 of the Ancient Monuments and Archaeological Areas Act 1979 in relation to Wales. Since its commencement, only five areas of archaeological importance have been designated in England (the historic centres of Canterbury, Chester, Exeter, Hereford and York, all in 1984), and none in Wales. There is no current intention to use this power to designate in Wales. We acknowledge the concerns raised by respondents that areas of archaeological importance can be a vital tool to ensure buried assets are investigated and recorded before being damaged or destroyed. However, we equally acknowledge custom and practice has developed through developer-funding of archaeological recording. There remain a number of other tools at the disposal of PAs to ensure vital investigation and recording occurs where development proposals are made on archaeologically sensitive sites, such as through planning conditions and appropriate policies contained within their Local Development Plans. We consider these tools suitable to offer a bespoke level of investigation and recording. This will be considered as part of any future consolidation of the principal historic environment Acts.

Chapter 14 - Outdoor advertising

No.	Recommendation	Welsh Government Response	Comments
14-1	We recommend that the definition of “advertisement” in the TCPA 1990 should be clarified, and included in the Code alongside other provisions relating to advertising.	Accept	The Welsh Government agrees that a single definition of “advertisement” should be included in the consolidation Bill alongside the provisions dealing with advertising. It is also agreed that the definition should be clarified to produce a single definition that avoids circularity as far as possible, and includes both the essence of the definition currently in section 336 of the Town and Country Planning Act 1990 (TCPA 1990) and the refinements currently in regulation 2 of the Town and Country Planning (Control of Advertisements) Regulations 1992.
14-2	We recommend that the reference to the display of advertisements currently included in the statutory definition of “advertisement” in the TCPA 1990 should be omitted.	Accept	The Welsh Government agrees the reference to the term “display” in the current statutory definition of “advertisement” is unhelpful and should be omitted from the definition to be included in the consolidation Bill.
14-3	We recommend that the word “site” should be used in place of “land”: 1) in the provisions of the Bill relating to the control of advertisements; and 2) in the Regulations when they are next updated; and that the Bill and the Regulations, where appropriate, should be drafted by reference to advertisements being displayed “on or at” land.	Accept	We understand the Law Commission’s recommendation is to replace the word “site” with “land” and that the Bill and the Regulations, where appropriate, should be drafted by reference to advertisements being displayed “on or at” land. The Welsh Government agree this change is likely to provide greater clarity to the legislation without changing the effect and reduce complexity of the provision. The precise wording that should be used in the Bill and Regulations will require careful consideration in the context of each provision and in the context of the legislation as a whole.
14-4	We recommend that a definition of “person displaying an advertisement” in the TCPA 1990 should be included in the Bill alongside other provisions relating to advertising, to include: 1) the owner and occupier of the land on or at which the advertisement is displayed; 2) any person to whose goods, trade, business or other concerns publicity is given by the advertisement; and 3) the person who undertakes or maintains the display of the advertisement.	Accept	The Welsh Government agrees that the same definition should be used in primary and secondary legislation to aid clarity. The definition in regulation 2(3) of the Town and Country Planning (Control of Advertisements) Regulations 1992 may form the basis for this. However, its precise wording will be considered during the drafting of the consolidation Bill.
14-5	We recommend that a discontinuance notice under the advertisements regulations: 1) should contain a notice as to the rights of any recipient to appeal against it; 2) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); and 3) should be “issued” (rather than “served”, as at present), with a copy served on all those deemed to be displaying the advertisement in question.	Accept	The Welsh Government agrees with the recommendation relating to discontinuance notices. The proposed amendment will align the procedures between discontinuance notices and enforcement notices, which will help improve clarity and certainty for all parties. The precise wording that should be used in the Regulations will require consideration when the Regulations are next reviewed and updated.

14-6	We recommend that section 220(2), (2A) and (3) should be replaced with a provision enabling regulations to be made providing for: 1) the dimensions, appearance and position of advertisements that may be displayed, and the manner in which they are to be affixed to the land; 2) the prohibition of advertisements being displayed or land being used for the display of advertisements without either deemed or express consent; 3) the discontinuance of deemed consent; 4) the making and determination of applications for express consent, and the revocation or modification of consent; 5) appeals against discontinuance orders and decisions on applications for express consent; 6) areas of special control over advertising; and 7) consequential and supplementary provisions.	Accept in principle	Section 220(1) of the TCPA 1990 provides the Welsh Ministers with powers to make regulations about restricting or regulating the display of advertisements so far as appears to them to be expedient in the interests of amenity or public safety. Section 220(2), (2A) and (3) provide further detail on what may be included in such regulations but do not limit the power in section 220(1). Therefore, the Welsh Government considers the Welsh Ministers can already make provision in regulations for the matters listed in the recommendation. However, the Welsh Government agrees that the restatement of sections 220(2), (2A) and (3) should describe the type of provisions which can be included in regulations rather than giving a power to apply sections of the TPCA 1990 with modifications.
14-7	We recommend that deemed consent under the advertisements regulations should be granted for a display of advertisements that has the benefit of planning permission.	Accept	Advertisement consent is one of a number of (sometimes overlapping) statutory consents that often need to be obtained alongside or after planning permission. The Welsh Government proposes in a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be combined to move towards a more integrated and streamlined model. This will include the linkages between advertisement consent and planning permission. Notwithstanding the future review, the Welsh Government acknowledges the benefits in extending deemed consent under the Advertisement Regulations to include where planning permission has been granted (as recommended). This would simplify the system by removing an area of overlap between two consenting regimes, removing the need to submit two different types of consent which will reduce costs for both applicants and planning authorities (PAs).
14-8	We recommend that the display of advertisements on stationary vehicles and trailers should be brought within control by the Regulations being amended so as to provide that: 1) no consent (express or deemed) is required for the display of an advertisement o inside a vehicle, or o on the outside of a vehicle on a public highway, other than one remaining stationary for more than 21 days; 2) deemed consent is granted for the display of an advertisement on the outside of a vehicle not on a highway, provided that the vehicle is normally employed as a moving vehicle and is not used principally for the display of advertisements.	Accept	The Welsh Government agrees with the Law Commission view that the display of advertisements on stationary vehicles and trailers should be brought under control of the planning system. Controlling this form of advertisement in the suggested manner will introduce greater clarity to the law in order to aid effective enforcement by PAs when such instances occur. Detailed consideration of the amendments needed to the Advertisement Regulations in order to introduce this control will be undertaken when the Regulations are next reviewed and updated.

14-9	We recommend that: 1) a provision should be introduced in the advertisements regulations to enable a certificate of lawfulness to be issued in relation to a display of advertisements; and 2) an appropriate enabling provision should be included in the Bill, in line with the approach indicated in Recommendation 14-6.	Accept	The Welsh Government agrees that a mechanism should be introduced similar to those governing applications for certificates of lawfulness of development to provide a binding decision as to the lawfulness of an existing or proposed advertisement. Although this will be a new process introduced to the system, we agree with the views of the Law Commission that it is important to do so in order to provide clarity to anyone who wants find out whether or not consent is required, especially when the consequences of siting unauthorised advertisements is severe, as to do so is a criminal offence.
14-10	We recommend that Class 13 in Schedule 3 to the 1992 Regulations should be amended to provide that deemed consent is granted for the display of advertisements on or at land that has been used for that purpose for ten years.	Accept	The Welsh Government agrees with amending the Regulations to provide that deemed consent is granted for the display of advertisements on a site which have been used for that purpose for at least ten years, rather than using a fixed date. As time goes on, a fixed date (currently 1 April 1974) would be less and less relevant, simply due to the passage of time. Introducing a rolling ten year period provides a consistent approach with other enforcement timescales. This legislative amendment will be considered when the Regulations are next reviewed and updated.
14-11	We recommend that the power (currently in section 224(1) (2) of the TCPA 1990) for the Welsh Ministers to include in Regulations provisions similar to those governing enforcement notices should not be restated in the Bill.	Accept	The Welsh Government agrees with not restating the power currently set out in section 224(1) and (2) of the TCPA 1990 in the Bill for the reasons set out in the consultation paper and final report, which we also note is supported by the majority of respondents to the consultation. As a separate issue, we note the comments made by some respondents regarding potential alternative enforcement powers in relation to unatharised advertisments. Any new enforcement related provisions will need to be considered as part of a future reform Bill, such as those set out in Recommendation 14-12.
14-12	We recommend that the powers currently in section 43 of the Dyfed Act 1987 (removal of other unauthorised advertisements) should be replaced with a new procedure, applying to all areas in Wales, allowing the removal of any unauthorised advertisement other than a poster or placard, subject to: 1) no advertisement being removed or obliterated without 21 days' notice having first been given to those responsible; 2) a right of appeal being available to recipients of such a notice and to owners and occupiers of the site of the offending advertisement – on grounds relating to the lawfulness of the advertisement, the service of the notice, and the time for its removal; 3) compensation being payable by the planning authority for damage caused to land or chattels by the removal of the advertisement (other than damage to the advertisement itself); and 4) protection for statutory undertakers to be afforded in similar terms to section 225K of the TCPA 1990).	Accept	The Welsh Government agrees with introducing a new procedure in Wales, allowing for the removal of any unauthorised advertisements, subject to those conditions set out in the final report. Introducing a new procedure will enhance PA powers across Wales in relation to unauthorised advertisements. We also agree section 225 of the TCPA 1990 should be retained to allow the expedient removal or obliteration of unauthorised posters and placards.
14-13	We recommend that the maximum sentence on conviction for unauthorised advertising displayed on or after the date of the enactment of the Bill should be increased to an unlimited fine.	Accept	The Welsh Government agrees with increasing the maximum sentence for unauthorised advertising to an unlimited fine. This will provide consistency in relation to other methods of enforcement whilst providing a greater deterrent.

14-14	We recommend that it be made clear on the face of the Bill, rather than (as at present) in the Regulations, that all statutory powers relating to advertising should be exercised in the interests of amenity and public safety.	Accept	The Welsh Government agrees with making it clear on the face of the Bill, rather than in regulations (as at present), that all statutory powers relating to advertising should be exercised in the interests of amenity and public safety. This will help bring consistency across all relevant functions relating to advertisements. The precise wording to be used will be considered during the drafting of the consolidation Bill.
14-15	We recommend that the provisions in section 220 of the TCPA 1990 (relating to advisory committees and tribunals) should not be included in the Bill.	Accept	The Welsh Government agrees with the Law Commission's view that the provisions in section 220 of the TCPA 1990 relating to advisory committees and tribunals determining appeals instead of the Welsh Ministers are redundant and should not be included in the consolidation Bill.
14-16	We recommend that the provisions in section 221(1)(b), (2) of the TCPA 1990 relating to experimental areas should not be included in the Code.	Accept	The Welsh Government agrees with the Law Commission's view that section 221(1)(b) and (2) of the TCPA 1990 relating to deemed consent for advertisement in "experimental areas" are redundant and should not be included in the consolidation Bill.
14-17	We recommend that section 223 of the TCPA 1990, providing for the payment of compensation in respect of the costs of removing advertisements on sites that were in use for advertising in 1948, should not be included in the Bill.	Accept	The Welsh Government agrees that section 223 of the TCPA 1990 is redundant and should not be included in the consolidation Bill. We agree the entitlement to compensation was only established to protect landowners who were displaying advertisements at the time the current system of control was introduced. With the system having been in existence for over 70 years, we support the Commission's view that this protection is now unnecessary.

Chapter 15 - Protected trees and woodlands

No.	Recommendation	Welsh Government Response	Comments
15-1	We recommend that the Planning Act should not attempt to define a “tree” or a “woodland”, in the context of tree preservation orders.	Accept	The Welsh Government agrees it would not be beneficial to define in primary legislation the meaning of ‘tree’ or ‘woodland’. To do so could fail to capture certain trees due to the many variations in species and form, as well as limit the scope of what could constitute ‘woodland’. However, we will consider whether it is possible to introduce a broad definition of what constitutes a ‘tree’ or ‘woodland’ in future guidance. Any future guidance would be subject to a public consultation and will be undertaken when the Town and Country Planning (Trees) Regulations 1999 are next reviewed and updated or new regulations made.
5-2	We recommend that the Bill should provide 1) that functions under the Code relating to the protection of trees must be exercised in the interests of amenity; and 2) that amenity for that purpose includes appearance, age, rarity, biodiversity and historic, scientific and recreational value; and 3) that tree preservation regulations may prescribe matters considered to be relevant to amenity.	Accept in principle	The Welsh Government agrees with the principle that functions under the Code relating to the protection of trees must be exercised in the interests of amenity, as we consider this will help bring consistency across all relevant functions. The detailed exercise of establishing the functions to which the duty should apply and the precise wording to be used will require careful consideration during the drafting of the Bill. We also agree the meaning of ‘amenity’ has changed over the years and now extends beyond visual amenity. We therefore agree that the meaning of ‘amenity’ should be clarified in legislation. Consideration will be given to how to best achieve this objective, either by including provisions in the Bill, or by providing a power to make provision in regulations. The precise wording to be used in the Bill or regulations will be considered during the course of drafting.
15-3	We recommend that the Bill should provide that: 1) tree preservation orders can in future be made to protect individual trees, groups of trees, or areas of trees; 2) that a group or area order protects only those trees that were in existence at the time the order was made; 3) that a new area order provides protection only until it is confirmed, at which time it must be converted into an order specifying the trees to be protected either individually or as a group; 4) that woodland preservation orders can in future be made to protect woodlands; and 5) that a woodland preservation order can protect all trees, of whatever age and species, within the specified woodland, whether or not they were in existence at the date of the order; and that the new regulations should be drafted accordingly.	Accept	The Welsh Government agrees with the recommendation of adding reference to a tree preservation order protecting areas of trees and of introducing the concept of a woodland preservation order in the Bill. This will not change the law but will aid clarity. Further, clarifying which trees are protected by an area order and woodland preservation order will assist planning authorities in their consideration of the appropriate type of protection order to pursue. We also agree with the position of many respondents who opposed the original proposal for the effect of existing area orders to cease after five years. We agree that the monitoring and reviewing process that would be required to enact this would place an unnecessary burden upon planning authority resources. We agree with the suggestion that guidance is the most appropriate means to emphasise the desirability of gradually converting existing area orders into an individual, group or woodland orders, so as to remove them in the future. The revision to guidance will be considered alongside any changes to the regulations or when new regulations are made. We do, however, agree that a new area order should only provide protection until confirmed, at which time it must be converted into an individual, group or woodland order.

15-4	We recommend that new trees regulations should require that a tree preservation order is to be notified to the owners and occupiers of any parcel of land on, in or above which any part of the protected trees is located.	Accept	The Welsh Government considers it is important all those likely to be affected by a tree preservation order are promptly and properly notified to minimise the chance of anyone inadvertently committing an offence. Notwithstanding this, we agree with the Law Commission's view that the current notification requirement to include neighbouring land is unnecessary and should be amended. We note the Law Commission's concern regarding the approach adopted in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and its application where a tree is close to a boundary. The precise wording will be considered when the regulations are next reviewed and updated or new regulations made.
15-5	We recommend that works to trees should not be brought within the scope of development requiring planning permission.	Supporting evidence for further consideration	Although planning permission is a key consent to enable a development to go ahead, consent for works to protected trees is one of a number of other (sometimes overlapping) statutory consents that need to be obtained alongside or after planning permission. This can be extremely confusing and generates uncertainty for both applicants and communities. The Welsh Government propose in a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. We note the Law Commission's view and recommendation regarding the consent for works to protected trees, which will inform this future and wider review.
15-6	We recommend that the exemption from the need for consent under a tree preservation order relating to works to "trees that are dying or dead or have become dangerous" (currently in section 198(6)(a) of the TCPA 1990) should be tightened up when the trees regulations are next updated. We recommend it should extend only to the cutting down, topping, lopping or uprooting of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm (or to such other extent as agreed in writing by the authority prior to the works being undertaken).	Accept	The Welsh Government agrees that the exemption for the need for consent under a tree preservation order relating to dying or dead trees should be tightened up. These current references in section 198(6)(a) of the TCPA 1990 are ambiguous and open to interpretation and can lead to works to a protected tree that are unnecessary. The proposed amendment to provide that the exemption should only extend to the cutting down, topping, lopping or uprooting of a tree which are urgently necessary to remove an immediate risk of serious harm, will result in greater clarity and certainty for all parties when determining whether works to protected trees are required . The precise wording will be considered when the new regulations are drafted.
15-7	We recommend that the exemption from the need for consent under a tree preservation order relating to works that are "necessary to prevent or abate a nuisance" (currently in section 198(6)(b) of the TCPA 1990) should not be restated either in the Act or in new trees regulations.	Accept	The Welsh Government agrees the precise meaning of the phrase "abatement of a nuisance" is uncertain which can lead to an inconsistent approach to works to protected trees. Not restating the exemption in the consolidation Bill or new regulations will provide clarity and balance allowing the planning authority to consider any alleged nuisance against any effect on amenity that would arise as a result of the proposed remedial works. We consider the advantages of certainty outweigh the prospect of more applications being introduced into the system.

15-8	We recommend that, when the regulations are next updated, consideration should be given to introducing a new exemption to allow the carrying out without consent of works to a tree protected by a woodland preservation order smaller than a specified size, but only where carried out for the sole purpose of improving the growth of other trees.	Reject	The Welsh Government does not agree with the introduction of the proposed exemption, as we share a number of concerns raised by many respondents to the consultation. We agree that the recommendation would undermine the purpose of woodland preservation orders, which is to provide sufficient protection in order to safeguard the long term continuance of the woodland by either the natural establishment of new trees or by new planting. Allowing works to be carried out without consent to trees protected by a woodland preservation order smaller than a specified size for the purposes of improving the growth of other trees could undermine the purpose of such an order. Such an exemption could also have a detrimental impact on the ecology of the woodland as saplings and the undergrowth play an important part in supporting and creating diverse habitants and biodiversity. Therefore, we believe the need for consent should be retained in order to ensure the management of protected woodlands are undertaken in line with best practice to safeguard them in their entirety. Where such an order applies, we expect landowners to be aware of their legal responsibilities and to seek appropriate consent when necessary.
15-9	We recommend that a provision should be introduced in the trees regulations (along with an appropriate enabling provision in the Act) to enable a certificate of lawfulness to be issued in relation to proposed works to a tree or woodland.	Reject	Whilst the Welsh Government accepts the issues raised by this proposal are similar to those raised by Recommendation 14-9 relating to the need for advertisements consent, in this instance, we do not agree something similar to a certificate of lawfulness should be introduced for tree preservation orders (TPOs). We do not consider this would add any real value as the current procedure for seeking consent under a TPO can be used in the same way without the need for additional resources or certification. Furthermore, there is a concern assigning something similar to a certificate of lawfulness to a living tree which will grow and change over time. Any certificate granted would need to be time-limited and require regular renewal as the tree(s) change. The process would only therefore provide a temporary degree of certainty for applicants, unlike the existing process for certificates of lawful use and development and the proposed introduction of certificates for the display of advertisements (as proposed in Recommendation 14.9), which in both cases can be issued in perpetuity. However, we will continue to evaluate the position, particularly in the light of the implementation of certificates of compliance in relation to Control of Advertisements Regulations (see Recommendation 14-9).
15-10	We recommend that planning authorities should be required to acknowledge applications for consent under the trees regulations.	Accept	The Welsh Government agrees with introducing a requirement for planning authorities to acknowledge receipt of an application for consent under the tree regulations in order to bring them in line with other types of applications under the Town and Country Planning Act 1990. Although this is currently undertaken as best practice, we do consider it would be beneficial to place the requirement in legislation. This legislative amendment will be considered when the regulations are next reviewed and updated or new regulations made.

15-11	We provisionally propose that: 1) the requirement to plant a replacement tree following the felling of a dangerous tree or following unauthorised works should be limited to the planting of a tree of appropriate species at or near the location of the previous tree (rather than, as at present, in precisely the same place); and 2) the requirement to plant trees to replace trees in a woodland that have been lost should be specified by reference to either the same number of trees or the same area of woodland.	Accept	The Welsh Government agrees with amending the wording in legislation to allow replacement trees to be planted 'at or near' the location of the original tree. We agree that in some instances practical reasons prevent replanting "at the same place" as the former tree(s). We do, however, wish to consider whether the planning authority should give consent to the proposed location if it not in precisely the same place as the previous tree. The precise wording to be used in the Bill will be given careful consideration once this has been resolved. We also agree that, in relation to woodlands, the requirement to replace trees that have been lost should be specified by reference to either the same number of trees or the same area of woodland at an agreed density to reflect the decision of the Court of Appeal in Distinctive Properties (Ascot) v Secretary of State.
15-12	We recommend that there should be introduced an explicit power enabling a planning authority to waive or relax a tree replacement notice.	Accept	The Welsh Government agrees it would be beneficial to introduce a provision in legislation which enables a planning authority to waive or relax a tree replacement notice. This will provide greater flexibility for planning authorities to apply their discretion via an explicit power when determining the appropriate course of action following a failure to replant the trees.
15-13	We recommend that powers to enable a planning authority to recover any expenses it has incurred in making and enforcing a tree replacement notice should be introduced when the regulations are next updated.	Accept	The Welsh Government agrees with the recommendation that expenses incurred by a planning authority should be able to be registered as a charge on the land. This will enable planning authorities to recover their costs in enforcing tree replacement notices from subsequent purchasers. The ability to recover these costs will assist planning authorities to pursue a proactive approach to enforcing tree replacement notices. Consideration will be given to how to best achieve this objective, either by exercising the power in section 209(5) to amend the relevant regulations (the Town and Country Planning General Regulations 1992), or by making express provision in the Bill that the expenses may be registered as land charges. We also acknowledge comments made by a planning authority in responding to the consultation regarding introducing equivalent powers to cover planning enforcement matters more generally. We will consider this issue as part of a wider review that we have committed to undertake on establishing the recovery of costs in delivering the development management service, which will include enforcement. This work stream will provide the evidence to inform future legislative change where necessary.
15-14	We recommend that the scope of the matters prohibited by a tree preservation order should be extended to include causing harm to a tree: 1) intentionally; or 2) recklessly.	Accept	The Welsh Government agrees with the Law Commission's view that the use of the phrase "intentional or reckless damage" should be used instead of "wilful damage" in order to provide greater clarity.
15-15	We recommend that the two offences currently in section 210 of the TCPA 1990, relating to works liable to lead to the loss of the tree (subsection (1)) and other works (subsection (4)) should be replaced with a single offence, triable either summarily or on indictment, of contravening tree preservation regulations, punishable on conviction with a fine of any amount.	Accept in principle	The Welsh Government agrees that providing for a combined offence of failing to comply with tree preservation regulations would be an improvement on the current position. That offence should be triable either way, and a person guilty of the offence should be liable to a fine to be determined by the court (with no statutory maximum). Having a combined offence with the court determining the amount of any fine in accordance with the facts of the case and the severity of the harm caused will avoid the potential issues identified by the Law Commission.

			Given that it's possible that this change will lead to an increase in the number of cases being heard in the Crown court (i.e. some of the relatively minor offences that are currently tried in the magistrates' court under section 210(4) could be tried in the Crown court instead), we will need to establish and consider in detail any additional costs that would arise. As highlighted in our response to Recommendations 12-24 and 12-25, this will be considered and balanced against the benefits identified by the Law Commission as part of the Judicial Impact Assessment that we will undertake to accompany a future Bill.
15-16	We recommend that the offence under section 210 of the TCPA 1990 (contravening tree preservation regulations) and under regulations made pursuant to the provision restating section 202A (prohibiting works to a tree subject to a tree preservation order) should be framed so as to require the prosecution to prove that: 1) a copy of the order had been served in accordance with the relevant statutory requirements before the start of those works; or 2) a copy of the order was available for public inspection at the time of the works. We also recommend that the regulations should include, alongside the requirement to make the order available for inspection, a further requirement to record on the order the date on which it was first thus made available	Accept in principle	The Welsh Government agrees with the principle of this recommendation. The issues raised are similar to those raised by Recommendation 12-21 relating to offences where an enforcement notice has not been complied with. The Welsh Government notes that the provisional proposal in the Consultation Paper has been revised in light of comments received from respondents We note the Law Commission's position that potential problems can arise in instituting/defending a prosecution for unauthorised works to a protected tree or woodland if a copy of the TPO has not been served on those who need to know about it, or if one has not been made available for inspection. We also note the issues raised by respondents. We agree in principle with addressing these issues but wish to ensure that, as far as possible, there is consistency between similar provisions (such as the offences of contravening a temporary stop notice, stop notice and enforcement notice). Therefore the approach to be adopted will require careful consideration during the course of drafting. We also agree to include in the regulations when they are next reviewed and updated or new regulations made, a requirement to record on a TPO the date on which it was first made available to provide clarity and to ensure that a planning authority is able to provide evidence that a copy of the order was available for public inspection at the time of the works. The precise wording to be used will be carefully considered when the provision is drafted.
15-17	We recommend that the provision restating section 211 of the TCPA 1990 should empower an authority notified of proposed works to a tree in a conservation area, to: 1) allow the works to proceed, with no conditions other than a two-year time limit; 2) allow the tree to be felled, subject to planting a replacement tree; 3) impose a tree preservation order, and to allow works to the tree other than felling, possibly subject to conditions; or 4) impose a tree preservation order, and to refuse consent for the works.	15-17(1) - Accept 15-17(2), (3) and (4) - Accept in principle	The Welsh Government agrees with the recommendation that a planning authority should be given the power to allow the works to proceed with no conditions other than a two year time limit. The Welsh Government also agrees in principle with the other elements of the Law Commission's recommendation, in particular, seeking to remove the two stage process identified by the Law Commission. However, consideration will need be given to whether this objective can be achieved and how to best achieve it. We need to ensure that any changes result in a simplified procedure.

Chapter 16 - Improvement, regeneration and renewal

No.	Recommendation	Welsh Government Response	Comments
16-1	We recommend that section 215 of the TCPA 1990 should be restated so as to make clear that a notice requiring land to be properly maintained can be served where the condition of the land: 1) is adversely affecting the amenity of part of the authority's area or the area of an adjoining authority; 2) does not result in the ordinary course of events from, the lawful carrying on of continuing operations on that land or a continuing use of that land that is lawful; and 3) is not the result of the unlawful deposit of controlled waste or extractive waste in contravention of section 33 of the Environmental Protection Act 1990.	16-1(1) – Accept 16-1(2) – Accept 16-1(3) – Reject	The Welsh Government agrees that stating the grounds on which a section 215 notice can be issued by including conditions (1) and (2) in the restatement of section 215 provides greater clarity than the current position where some of the grounds are stated in section 217. We agree that a Planning Authority (PA) should undertake prior investigation before issuing a section 215 notice to ensure the land in question is in poor condition, where it does not result in the ordinary course of events from its lawful operation/use i.e. operations/use that are not in breach of Part 3 of the Town and Country Planning Act 1990 (TCPA 1990). This proposed change would provide clarity regarding the circumstances in which a notice may be issued and may prevent unnecessary issuance of a section 215 notice and subsequent appeal. The Welsh Government, however, rejects condition (3) of this recommendation. We understand the Law Commission's intention is to prevent a section 215 notice being issued where the untidy state of land arises as a result of waste unlawfully deposited by a third party. While it is accepted land can be subject to unsolicited activities by a third party, it is ultimately the responsibility of landowners/occupiers to secure and maintain their land and the responsibility of PAs to use the powers available to them to ensure local amenity is maintained. The objective of a section 215 notice is to ensure a relatively speedy resolution to improperly maintained land which is affecting the amenity of land within a PA's area or adjoining land, and the Welsh Government does not wish to limit its scope. Whilst we acknowledge that a PA should undertake investigations prior to issuing a section 215, it would be disproportionate for those investigations to extend to establishing the party which caused the amenity of the land to be adversely affected.
16-2	We recommend that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that were lawful at the time, but are no longer lawful.	Accept in principle	The Welsh Government welcomes the consideration given by the Law Commission to ensure PAs have sufficient powers to act where land (or buildings) are adversely affecting the amenity of part of the authority's area. We note Recommendation 16-1 stipulates that section 215 of the TCPA 1990 should be restated to make clear that a notice requiring land to be properly maintained can be served where the condition of the land does not result in the ordinary course of events from the lawful carrying on of continuing operations on that land, or a continuing use of that land that is lawful. As mentioned in response to Recommendation 16-1 we understand lawful means not in breach of Part 3 of the TCPA 1990. Having discussed this recommendation and Recommendation 16-1 with the Law Commission, we consider the change suggested by Recommendation 16-1 will provide sufficient clarification that a notice could be issued in the circumstance set out by the Commission in paragraph 16.19 of the consultation document.

16-3	We recommend that a notice under the provision in the new Bill replacing section 215: 1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); 2) should be “issued” (rather than “served” as at present), with a copy served on all those responsible for the maintenance of the land in question; and 3) should contain a notice of the rights of any recipient to appeal against it.	Accept	The Welsh Government agrees with the recommendation to amend the requirements in relation to notices issued under section 215 of the TCPA 1990. This will align procedures between section 215 notices, enforcement notices and advertisement discontinuance notices and provide clarity and certainty. However, the precise wording to be used will require careful consideration.
16-4	We recommend that the Bill should make it clear that all appeals against section 217 notices are normally to be determined by inspectors, in line with Recommendation 11-2.	Accept	We understand the recommendation should refer to appeals made under section 217 (appeals against section 215 notices). On the basis of this understanding the Welsh Government agrees that appeals under section 217 should normally be determined by appointed persons (Planning Inspectors). Such appeals are relatively uncontroversial and not complex in nature, when compared to proceedings normally determined by the Welsh Ministers, and Planning Inspectors are best placed to determine these appeals in the first instance. As Planning Inspectors determine most appeals under the TCPA 1990, the proposed change would provide consistency with how the system of planning appeals more generally operates. We also agree it would be simpler and clearer if the legislation was amended to reverse the current presumption that the Welsh Ministers are directly responsible for the determination of planning-related appeals unless delegated to a person appointed by them, to one whereby it is clear that all appeals are to be determined by an appointed person (Planning Inspector), unless prescribed for determination by the Welsh Ministers or recovered by the Welsh Ministers (in case-specific directions) for their determination. (See also our response to Recommendation 11-2.)
16-5	We recommend that the Bill should include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations): 1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority’s intention to carry out remedial works; 2) to carry out itself the works specified in the notice, either o on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or o where no response is received to the notice; 3) to recover the cost of such works from the owner, or to make them a charge on the land; and	Accept in principle	The Welsh Government agrees with the principle of replacing the powers currently set out section 89(2) of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) with powers to sit alongside those currently in section 215 of the TCPA 1990. This would result in a similar theme of powers being placed in the same part of the Bill. The powers under section 89(2) of the 1949 Act allow PAs to carry out works themselves, either on land belonging to them or on other land subject to the consent of all persons with an interest in the land even if the condition of the land arises as a result of operations/use which is not in contravention of Part 3 of the TCPA 1990. Section 89(2) also enables PAs to carry out necessary works on land which is likely to become derelict, neglected or unsightly by reason of the collapse of the surface, due to former underground mining. These powers are different to those contained in section 215 of the TCPA 1990, and because works on land (other than that belonging to a PA) has to be agreed before they can be carried out, they do not include a right of appeal. Whilst the Welsh Government recognises there are potential additional powers in section 89(2) of the 1949 Act, we consider further work is required to ensure that any changes to those powers do not result in duplication of provisions already in the TPCA 1990, e.g. the powers in section 215, section 219 and the acquisition and appropriation powers found in Part 9, and to

	4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.		ensure any new procedure associated with the power in section 89(2) is appropriate to the works permitted to be carried out.
16-6	We recommend that the new Planning Code should include powers, equivalent to those currently available under section 89(1) of the 1949 Act, to enable a planning authority: 1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land; 2) to carry out itself the works specified in the notice, either o on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or o where no response is received to the notice; and 3) to acquire the land for the purpose of carrying out such works by agreement, or using compulsory powers where the owner cannot be found after reasonable enquiries have been made.	Accept in principle	The Welsh Government agrees in principle with the recommendation to include powers equivalent to those in section 89(1) the 1949 Act and that these might be appropriately restated alongside similar provisions in the Bill. We agree the current power to plant trees should be widened to cover landscaping. We note some respondents raised concerns regarding the inclusion of compulsory purchase powers and the undertaking of works without the landowners' agreement. In this regard, section 89 of the 1949 Act contains existing compulsory purchase powers. If Recommendation 16-6(3) is implemented the planning authorities' compulsory purchase powers would be more limited than under the 1949 Act. As with Recommendation 16-5 we consider further work is required to define the scope of any compulsory purchase power, noting the comments of PAs who responded, to prevent the duplication of provisions already in the TPCA 1990 e.g. the acquisition and appropriation powers found in Part 9 and to ensure any new procedure associated with the power in section 89(1) of the 1949 Act is appropriate to the works permitted to be carried out.
16-7	We recommend that the Bill should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting, 1) by enabling planning authorities: o to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it; o to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence; o in either case, to take direct action where necessary, and recharge those responsible where appropriate; and 2) by enabling town and community councils to serve fixed penalty notices in appropriate cases.	Accept in principle	The Welsh Government agrees with the principle of this recommendation. Activities such as graffiti and fly-posting can have a detrimental effect on the amenity of an area and run contrary to the Welsh Government's agenda in national planning policy of supporting the well-being of people and communities and safeguarding the environmental value and amenity of places. We agree that it might be appropriate to introduce some form of control to facilitate the removal of graffiti and flyposting, broadly similar to the provisions introduced into the TCPA 1990 by the Localism Act 2011 in England. We have considered objections raised by some respondents to this recommendation on the basis of additional hardship for property owners stemming from the actions of a third party, as well as persistent issues where the owner has taken reasonable steps to prevent them. These objections are entirely understandable. Equally, there is precedent for forms of control over these activities by third parties, such as in the Anti-Social Behaviour Act 2003, England-only provisions introduced into the TCPA 1990 by way of the Localism Act 2011 and section 215 notices requiring land to be properly maintained. If new provision is made, the balance between the interests of the public and those of owners will need to be considered. At this stage, the recommendation only proposes regulation-making powers. We consider this to be appropriate as, given the recent history of this subject, the mechanisms must be changed from time to time in response to what is an evolving issue. However, detailed consideration will need to be given to the scope of any enabling power and whether some provisions should be placed in primary legislation. As the recommended changes constitute a policy change that is likely to require a future reform Bill for its delivery rather than through the scope of the consolidation exercise, the Law Commission's view and the consultation responses will be considered further as part of the evidence base to inform any future Bill. This will include the appropriateness of the recommendation for Town and Community Councils to serve such fixed penalty notices.

16-8	We recommend the amendment of Part 18 of and Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones), and the provisions relating to enterprise zones in the TCPA 1990 and related legislation, so that they no longer apply in relation to Wales	Accept	The Welsh Government agrees with the recommendation to dis-apply provisions in the Local Government, Planning and Land Act 1980 ("1980 Act") and the TCPA 1990, relating to enterprise zones, in relation to Wales. We note the considerable support for this proposal from consultees. As explained in response to Recommendation 5-12 and 7-9, we agree that provisions currently in Part 1 of the TCPA 1990 enabling enterprise zone authorities to be designated as PAs and section 88 and section 89 (planning permission for development in enterprise zones) of the TCPA 1990 should not be restated. No order under Schedule 32 of the 1980 Act has been made in Wales since 1985. Further, a new enterprise zone scheme was introduced in 2012 by amendments to the Capital Allowances Act 2001. The presence of two schemes of the same title adds confusion to the current legislative landscape. We therefore agree with the Law Commission's recommendation that Part 18 of, and Schedule 32 to, the 1980 Act should be amended so they no longer apply in Wales.
16-9	We recommend the amendment of the New Towns Act 1981, and the provisions relating to new towns in the New Towns and Urban Corporations Act 1985, the TCPA 1990, the Housing and Regeneration Act 2008, and related legislation, so that they no longer apply in relation to Wales.	Reject	The Welsh Government does not agree with the recommendation to dis-apply the relevant provisions relating to new towns in the New Towns Act 1981, the New Towns and Urban Corporations Act 1985, the Housing and Regeneration Act 2008 and the TCPA 1990 in relation to Wales. We consider them still relevant. The Welsh Ministers have an important leadership role to play when considering the demand for housing, facilities and infrastructure. We consider the Welsh Ministers should have all the necessary tools available to aid development and regeneration in the future. Although these powers have not been used in Wales for some time, a Welsh Government objective in Prosperity for All: the national strategy is to deliver modern and connected infrastructure and to undertake this through requiring co-ordinated planning of new homes, facilities and infrastructure by local authorities, health bodies, housing associations and other key partners. It would be expedient to retain the powers contained in the New Towns Act 1981, which might be used to deliver this co-ordinated approach. While most respondents to the Law Commission's consultation took a different view, we consider it necessary to retain powers relating to new towns to preserve available options for the Welsh Ministers to support their leadership role.

16-10	We recommend the amendment of 1) Part 16 of and Schedules 26 to 31 to the Local Government, Planning and Land Act 1980 (urban development areas and urban development corporations), and 2) the provisions relating to urban development corporations in the New Towns and Urban Development Corporations Act 1985, the TCPA 1990, the Leasehold Reform, Housing and Urban Development Act 1993, and related legislation, so that they no longer apply in relation to Wales.	Reject	The Welsh Government does not agree with the recommendation to dis-apply the relevant provisions in the 1980 Act, the New Towns and Urban Development Corporations Act 1985, the Leasehold Reform, Housing and Urban Development Act 1993 and the TCPA 1990 in relation to Wales. The Welsh Ministers and local authorities have an important leadership role to play in regeneration. We consider the Welsh Ministers should have all the necessary tools available to aid development and regeneration in the future through establishing appropriate delivery bodies similar to Cardiff Bay Development Corporation. For the reasons given in relation to Recommendation 16-9, it would be expedient to retain the powers set out in Part 16 of the 1980 Act, which might be used to deliver this co-ordinated approach. While most respondents to the Law Commission's consultation took a different view, we consider it necessary that retaining powers relating to urban development corporations preserves available options for the Welsh Ministers to support their leadership role.
16-11	We recommend the amendment of 1) Part 3 of the Housing Act 1988 (housing action trust areas), and 2) the provisions relating to housing action trusts in the TCPA 1990 and related legislation so that they no longer apply in relation to Wales.	Accept	The Welsh Government agrees with the recommendation to dis-apply Part 3 of the Housing Act 1988 and relevant provisions in the TCPA 1990 (Housing Action Trust ("HAT") areas), in relation to Wales. The aim of HATs is to take over local authority housing within a designated area for a limited period, repair and modernise the housing held by it, secure improvement of the general environment of the area and following this regeneration, increase the diversity of tenancy through transferred ownership to other social landlords. The 1987 white paper, which supported the introduction of HATs suggested they be established in inner-city areas with serious housing and social problems and in areas where there is a predominance of Council housing. No HAT has been established in Wales and this legislation appears to have outlived its purpose as other initiatives have been undertaken in Wales which have secured the improvements to housing stock and increased diversity of tenancy.
16-12	We recommend the amendment of Part 3 of and Schedule 5 to the Agriculture Act 1967 (rural development boards) and related legislation so that they no longer apply in relation to Wales.	Accept	The Welsh Government agrees with the recommendation to amend Part 3 of, and Schedule 5 to, the Agriculture Act 1967, so that they no longer apply in relation to Wales. While we consider other regeneration tools should be retained to support the Welsh Ministers' leadership role in implementing its national strategy, rural development boards are of little relevance given its limited use and opposition received to the only proposed board in Wales. Along with the stigma attached to such boards, a rural development board may use powers which could be deemed to be imposed on such areas. This conflicts with the supporting role advocated by Prosperity for All: the national strategy to address the special issues rural areas face.

16-13	We recommend that section 231 of the TCPA 1990 (power of the Welsh Ministers to require local authorities to acquire and develop land) should not be restated in the Code.	Accept	The Welsh Government agrees section 231 of the TCPA 1990 should not be restated. Section 231 of the TCPA 1990 gives the Welsh Ministers powers to compel a PA to: • carry out steps to acquire land which in their opinion ought to be acquired by that PA under section 226; and • to take such steps as may be specified in the order for carrying out the development if they are satisfied that a local authority have failed to carry out, on land acquired by them under section 226 or appropriated by them under section 229, any development which in their opinion ought to be carried out. If the Welsh Ministers were to use these powers there would firstly be an inquiry into the PA's alleged default in failing to acquire the land. If the Welsh Ministers were then to make an order requiring the PA to take steps to acquire land, this first inquiry may be followed by a further inquiry in the event of objection being made to the PA's compulsory purchase order. On both occasions, the inquiry would address the suitability and necessity of the compulsory acquisition. Further, should the Welsh Ministers require land to be acquired for planning purposes, a more direct method would be to use powers under section 228 of the TCPA 1990 to acquire land themselves (provided there is a public purpose involved) rather than placing a requirement on a PA to make a compulsory purchase order which it does not wish to make, and to carry out development which they do not intend to do.
16-14	We recommend the incorporation in the Bill of provisions equivalent to Part 9 (other than section 231) and sections 251, 258, and 271 to 282 of the TCPA 1990 (acquisition of land for planning purposes).	Accept	The Welsh Government agrees with the recommendation to incorporate all provisions relating to the acquisition of land for planning purposes and associated land rights in one place.

Chapter 17 - High Court challenges

No.	Recommendation	Welsh Government Response	Comments
17-1	We recommend that Part 12 of the TCPA 1990 (challenges in the High Court to the validity of actions and decisions under the Act) should be replaced in the Planning Bill by new provisions to the effect that a court may entertain proceedings for questioning any decision of a public body under the Code (other than one against which there is a right of appeal to the Welsh Ministers) – and any failure to make any such decision – but only if: 1) the proceedings are brought by a claim for judicial review; and 2) the claim form is filed: o before the end of the period of four weeks in the case of a challenge to the decision of the Welsh Ministers on an appeal against an enforcement notice (other than a decision granting planning permission), a tree replacement notice, an unsightly land notice or a decision refusing a certificate of lawfulness of existing use or development; or o before the end of the period of six weeks in any other case, beginning with the day after the day on which the relevant decision was made.	Accept in principle	The Welsh Government agrees with the Law Commission's view that there is much overlap between the two routes currently available to challenge the validity of planning decisions (under Part 12 of the Town and Country Planning Act 1990 or under Part 54 of the Civil Procedure Rules [CPR]). With very little difference between them, we agree in principle that there is no longer a need to retain a separate system of challenge under planning legislation and consider the judicial review procedure under Part 54 of the CPR provides the most appropriate route to challenge the validity of planning decisions. This procedure is widely understood and offers a straightforward approach for the review of administrative decisions. The legislative change will also reduce the complexity of the law and make the system more accessible for potential claimants seeking to challenge the validity of planning decisions. We also note the comprehensive support received from respondents to the consultation paper on this recommended change to the legislation. However, it will be necessary to consider the detailed provisions and any consequential amendments to related legislation as the Bill evolves to ensure workable arrangements can be put in place and, where appropriate, differences retained. Such a change to the legislation would also need to be considered in the Judicial Impact Assessment that will accompany a future Bill.
17-2	We recommend that Part 5 of the PCPA 2004 (relating to the correction of minor errors in decisions) should be included within the Bill, but amended so as to allow a 14-day period within which the Welsh Ministers or an inspector can respond to a request to make a correction to their decision, and an applicant can respond to a notification by them that they propose to make such a correction.	Accept in principle	The Welsh Government agrees in principle that the provisions under Part 5 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) need to be reviewed in relation to the time required to deal with correctable errors. Setting a 14 day period to address any request for a correction to be made and pausing the six week time limit for High Court challenge once a request is made, should discourage unnecessary applications to the High Court where a simple correction to a decision would resolve the issue. We will also consider the scope of section 59 of the PCPA 2004 in respect of what decisions need to be captured.

Chapter 18 - Miscellaneous and supplementary provisions

No.	Recommendation	Welsh Government Response	Comments
18-1	We recommend that: 1) the provisions of the Bill applying it to statutory undertakers should be simplified as far as possible, to clarify the identity of those bodies that are statutory undertakers for any or all of the purposes of the Bill and any regulations made under it; 2) that a single list of such bodies should be included in Welsh Government guidance, including in relation to each such undertaker: o the purpose for which the body is to be a statutory undertaker; o the appropriate Minister; and o its operational land.	18-1(1) - Accept in principle 18-1(2) - Reject	The Welsh Government agrees with the Law Commission's view that the legislation relating to statutory undertakers is complex and confusing. We will seek to consolidate and simplify this aspect of the law in order to create more accessible legislation. However, our ability to do so can only be determined during our detailed consideration and drafting of provisions for inclusion in the consolidation Bill and will depend on the extent changes can be achieved through a consolidation exercise. We note the second part of the recommendation for guidance on specific aspects of the provisions relating to statutory undertakers. We have a number of practical concerns about this aspect of the recommendation. Compiling and maintaining a single and comprehensive list of bodies who are statutory undertakers is likely to be time consuming with little practical benefit to be gained given the limited relevance of these provisions to most users of the planning system. Keeping the list up to date is also likely to raise issues, for example, the list would need to be updated when the UK Government have issued new, or revoked existing, licences under the Electricity Act 1989 (such bodies are statutory undertakers for certain purposes of the Town and Country Planning Act (TCPA) 1990). In our view, the time needed to produce and maintain this guidance will not represent the best use of resources for the limited practical benefits it will provide. Providing greater clarity on the "appropriate Minister" will be achieved through the consolidation exercise. It will provide the opportunity to accurately reflect the transfer of functions to the Welsh Ministers through Transfer of Functions Orders and the Government of Wales Act 2006. However, as already highlighted the extent to which clarity can be provided will be determined during the course of preparing and drafting the Bill. Whether additional guidance on this matter will be required can then be considered following the redrafting of the provisions. It would also be impractical to define for each statutory undertaker what its operational land would be beyond the provisions in legislation. This can only be established on a case by case basis in the context of the proposed development or operation on land to be undertaken by the statutory undertaker. However, we will seek to consolidate the legislation relating to the meaning of operational land to make the existing law more accessible. Therefore, on the basis of our concerns, we do not propose to take forward this element of the recommendation.
18-2	We recommend that, when the GPDO is next revised, consideration should be given to separating it into two orders, one dealing with permitted development rights relating to dwellings and one covering other cases.	Reject	The Welsh Government notes the provisional proposal in the Consultation Paper has been revised in light of comments received from respondents. The provisional proposal suggested that consideration should be given to separating those provisions in the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) relating to development by statutory undertakers, the Crown, mineral operators, and other similar bodies, from those relating to development generally.

			The revised recommendation is that consideration should be given to separating the GPDO into two orders, with householder permitted development rights (PDRs) contained in one order and the remaining types of PDRs contained in another. The Welsh Government has considered the provisional proposal and the revised recommendation. In terms of the provisional proposal, we agree with the views of many respondents that separating those provisions relating to development by statutory undertakers and other similar bodies would add complexity for professionals with little tangible benefit to non-professionals using the system. Having considered the revised recommendation, it is our view all PDRs should be located in a single order, as it provides a single location for users and operators of the planning system to access them, providing for more accessible legislation. The GPDO is also structured into a number of parts to reflect the PDRs for different types of development. This enables users or operators of the planning system to access the relevant PDRs of interest to them. However, we acknowledge that the arrangement of this Order could be improved to make the legislation more accessible. We will consider simplifying, re-categorising and merging some parts of the GPDO when we consolidate this Order as part of our future legislative work programme. Given the technical nature of the householder PDRs and to increase the accessibility of this aspect of the legislation for non-professionals, we have published an illustrated householder guide, which provides a simple interpretation of these commonly used PDRs.
18-3	We recommend that section 283 of the TCPA 1990 (relating to the display of advertisements on the operational land of statutory undertakers) should not be restated in the Code.	Reject	Section 222 of the TCPA 1990 grants deemed planning permission where the display of advertisements is in accordance with regulations made under section 220. It does not, however, prevent an application for planning permission for development involving the display of advertisements being made to the planning authority. Therefore, an application for planning permission in relation to the display of advertisements on operational land of statutory undertakers can be made. Whilst it remains possible for such an application to be made, section 283 is required to preserve the current legal position. Advertisement consent is one of a number of other (sometimes overlapping) statutory consents which are required to be obtained alongside planning permission. This can be confusing and generates uncertainty for both applicants and communities. The Welsh Government proposes a future programme of work to undertake a wider review of statutory consents to establish whether or not the various consenting regimes that directly overlap or are linked with planning permission can be included in a more integrated and streamlined approach. The continued requirement for an equivalent provision to section 283 of the TCPA 1990 will be considered as part of that review.

18-4	We recommend that section 316A of the TCPA 1990 (which enables regulations to be made relating to planning permission for development by local authorities that are statutory undertakers and the display of advertisements on their operational land) should not be restated in the Bill.	Accept	Section 316A allows the Welsh Ministers by regulations to make modifications and exceptions to specified provisions in relation to their application to planning authorities who are statutory undertakers. We note the Law Commission's view that section 316A should not be restated in the Bill on the basis no regulations have been made under this provision to date, and the clear support of respondents to the consultation to this recommendation. Having considered the extent to which exceptions and modifications can be made under this provision, we cannot envisage circumstances in which the Welsh Ministers would use the powers in section 316A. On this basis we agree with the recommendation that section 316A should not be restated in the consolidation Bill.
18-5	We recommend that the new Bill should generally use – in place of the term "winning and working of minerals" – the term "mining operations", defined so as to include: 1) the winning and working of minerals in, on or under land, whether by surface or underground working; 2) the removal of material of any description from: ○ a mineral-working deposit; ○ a deposit of pulverised fuel ash or other furnace ash or clinker; or ○ a deposit of iron, steel or metallic slag; and 3) the extraction of minerals from a disused railway embankment.	Accept	The Welsh Government agrees with the recommendation that the term "winning and working of minerals" should generally be replaced with "mining operations" in the consolidation Bill, as it represents a more commonly understood and encountered term. The Welsh Government agrees the existing definitions of "winning and working of minerals" and "mining operations" should be rationalised so far as possible. In undertaking this exercise it will be important that the substance of the existing law is maintained. This will determine the extent to which these definitions can be rationalised and replaced by a single definition. This, and the precise wording to be used, will be fully considered during the drafting of the Bill.
18-6	We recommend that Schedule 2 to the Planning and Compensation Act 1991 (minerals permissions granted prior to 1 July 1948) and Schedule 13 to the Environment Act 1995 (minerals permissions granted from 1 July 1948 to 22 February 1982) need not be restated in the Bill, but should remain as they are.	Accept in principle	The Welsh Government agrees that certain elements of these Schedules to the Planning and Compensation Act 1991 and Environment Act 1995, do not need to be included in the consolidation Bill and should remain in these Acts. As highlighted in the report this includes the requirements to compile registers of mineral permissions by specified dates, which have now long past. However, the registers of mineral permissions and other aspects of these Schedules that relate to dormant sites and their possible future reactivation, continue to be relevant. It might be appropriate for these aspects and others that continue to be relevant to form part of the consolidation exercise in order to create more accessible legislation. As acknowledged in the Report, how we best present these provisions will be determined during the detailed drafting process of the Bill. However, the exercise of consolidating and presenting the existing legislation will not change the legal effect of the provisions, which we note was of concern to some respondents to the consultation.

18-7	We recommend that the Bill should include: 1) the provisions currently in Schedule 14 to the Environment Act 1995 (periodic review of minerals permissions); and 2) those currently in Schedule 9 to the TCPA 1990 (discontinuance of minerals permissions). In relation to the discontinuance of minerals permissions, the Welsh Government should consider providing guidance on the meaning of "substantial extent" in Schedule 9 to the TCPA 1990.	Accept in principle	In order to create more accessible legislation, the Welsh Government believes it is sensible for the Schedules identified in this recommendation to be incorporated into the consolidation Bill. We note the Law Commission's view that guidance should be provided on the meaning of "substantive extent" in Schedule 9 to the TCPA 1990. However, some guidance on the meaning in the context of Schedule 14 to the Environment Act 1995 is already provided in Minerals Planning Guidance (MPG) 14, which remains extant policy in Wales. Further improvements to this aspect of the guidance can be considered when MPG 14 is next updated.
18-8	We recommend that the provisions of the TCPA 1990 in the form in which they apply as modified by the TCP (Minerals) Regulations 1995 (in relation to minerals development) should be included in the Bill itself rather than in secondary legislation.	Accept	The Welsh Government agrees modifications to the TCPA 1990 prescribed in the Town and Country Planning (Minerals) Regulations 1995 should be included in the consolidation Bill. Incorporating these modifications in relation to minerals development in the Bill will provide more accessible legislation for both operators and users of the planning system. The Welsh Government intends to retain a power to amend the modifications set out in the consolidation Bill. This will provide the necessary flexibility to respond to the highly technical nature of development consisting of mining operations or involving the depositing of mineral waste.
18-9	We recommend that the Bill should include 1) a power for the Welsh Ministers to provide for a scale of fees for the performance by them or by planning authorities of any of their functions under the Code, by publication rather than prescription; 2) a provision equivalent to section 303(10) of the TCPA 1990 (income from the fees so charged not to exceed the cost of performing the relevant function); and 3) a provision requiring any proposed scale of fees to be appropriately publicised before being formally published.	18-9(1) - Accept 18-9(2) – Accept in principle 18-9(3) – Accept	The Welsh Government agrees that the Welsh Ministers, to the extent they are not able do so under existing powers, should have the power to publish planning related fees in a published document separate from regulations. Regulations will still be required to provide for other matters such as exemptions from fees. However, the ability to detail the amount of the fees payable in a published document rather in regulations will better enable the Welsh Government to react to any changes in costs of undertaking planning authorities' and Welsh Ministers' functions and address the balance of appropriately resourcing planning authorities. We agree in principle that fees charged should not exceed the cost of performing the relevant function. We acknowledge comments and suggestions received in response to the consultation by various sectors in relation to how fees should be structured, distributed and their relationship with providing a quality service. The Welsh Government is undertaking further research on planning fees and these themes will form part of its remit. We also agree with the recommendation and the comments made by respondents that any new scale of fees must be subject to consultation.
18-10	We recommend that there should be a single provision in the Bill providing for the determination by the Upper Tribunal of disputes as to compensation under provisions in the Bill relating to revocation, modification and discontinuance of planning permission, temporary stop notices, stop notices, damage caused by entry for enforcement purposes, tree preservation, highways, and statutory undertakers, under the Land Compensation Act 1961.	Accept in principle	The Welsh Government agrees a single provision reflecting the existing law regarding the determination by the Upper Tribunal of disputes as to compensation relating to the areas suggested by the Law Commission might help to simplify and clarify the law resulting in more accessible legislation. However, removing repetition does not always improve accessibility. Whether it does so in this case will be considered in the drafting of the Bill.

18-11	We recommend that guidance relating to planning inquiries and appeals should strongly encourage the inclusion of a suitably worded statement of truth in any witness statement (including in relation to appeals decided on the basis of written representations).	Accept	The Welsh Government notes the revised Law Commission position on this matter having considered the comments received from the Planning Inspectorate Wales to the consultation. As we share the concerns raised by the Planning Inspectorate, we agree with the Law Commission's revised position that it is more appropriate to encourage through guidance the inclusion of a 'statement of truth' in any witness statement relating to planning appeals. An endorsement is already advocated in the procedural guide for expert evidence relating to planning appeals in Wales (Procedural Guide – Wales, May 2017). Annexe 5 of this guide explains what constitutes expert evidence in the planning appeals process and the need to include an appropriate form of endorsement in such evidence, which is suggested to be: *"The evidence which I have prepared and provide for this appeal reference APP/xxx (in written statement of evidence, written statement or report) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions"*. We have discussed this recommendation with the Planning Inspectorate Wales who are in agreement that guidance should encourage the inclusion of an endorsement of truth in any statement of case and proof of evidence supporting the appeal, irrespective of whether it relates to expert evidence. A distinction will, however, remain between expert witnesses and any other persons, which can be achieved by the creation of separate endorsements. The appropriate form of endorsement for non-expert witnesses will need to be considered further. These changes are likely to be undertaken as part of any wider future review of the guide by the Planning Inspectorate Wales.
18-12	We recommend that the power to make orders as to the costs of parties to proceedings, currently in section 322C(6) of the TCPA 1990, should be restated in an amended form so as to make it explicit that such an order is only to be made where: 1) a party to an appeal has behaved unreasonably; and 2) that unreasonable behaviour has led other parties to incur unnecessary or wasted expense.	Accept	In including the power to make orders as to the costs of parties to proceedings (currently in section 322C(6) of the TCPA 1990) in the consolidation Bill, we agree it would be beneficial to enshrine this longstanding principle in primary legislation. This established principle is currently set out in detail in both the Development Management Manual (May 2017) and the Planning Inspectorate's 'Procedural Guide – Wales' (May 2017). Including it in primary legislation will clarify the circumstances in which an award of costs can be made and make the legislation more accessible for both users and operators of the planning system. The precise wording to be used will be fully considered during the drafting of the Bill.
18-13	We recommend that the Planning Bill should incorporate provisions equivalent to those currently in: 1) section 276 of the Public Health Act 1936 (power of a planning authority to sell materials removed in executing works); 2) section 289 of that Act (power to require the occupier of any premises not to prevent works being carried out); and 3) section 294 of that Act (limit on the liability of landlords and agents in respect of expenses recoverable), to be applicable to the carrying out by the authority of works required by discontinuance notices, enforcement notices, tree replacement notices, and unsightly land notices.	Accept	The Welsh Government notes the overwhelming support received by respondents to the consultation for this recommendation. We agree the powers provided in these sections of the Public Health Act 1936 (PHA 1936) continue to be of use. Incorporating them into the consolidation Bill will result in greater accessibility and understanding of the law. These sections of the PHA 1936 are applied with modifications by the Town and Country Planning General Regulations 1992 ("the 1992 Regulations"). The modified sections are applied to the steps required to be taken by certain notices under the TPCA 1990 namely an enforcement notice, a tree replacement notice and an unsightly land notice. The consolidation exercise presents an opportunity to include the relevant provisions of the PHA 1936 in the Bill without the need to apply them with modifications. This would mean provision such as that in the 1992 Regulations will no longer be required, therefore rationalising the statutory framework for land use planning.

			Where certain steps are taken by a planning authority to enforce discontinuance orders, the TCPA 1990 directly applies section 276 of the PHA 1936 but not sections 289 and 294. We note the Law Commission's view that sections 289 and 294 should equally apply for reasons of consistency. We agree that applying section 294 of the PHA 1936 to the steps taken by a planning authority would provide consistency. We note the recommendation refers to applying section 289 to the carrying out by the planning authority of works required by a discontinuance notice. As section 289 of the PHA 1936 applies to owners and not to planning authorities, we understand the Law Commission recommendation to mean that section 289 of the PHA should apply where a discontinuance order requires work to be undertaken. We agree applying section 289 in such circumstances would provide consistency. The scope of changes that can be achieved through this consolidation exercises is likely to present the opportunity to achieve this consistency.
18-14	We do not recommend that the Bill should provide any further definitions of terms, other than those recommended below.	Accept in principle	The Welsh Government agrees in principle with the Law Commission's recommended approach. We also note the suggestions made by respondents to the consultation for the introduction of further definitions for certain terms or words and the comments made by the Law Commission in response to them. However, the exercise of producing and drafting the consolidation Bill may require us to consider the need to introduce further labels and definitions in order to improve the accessibility of the law. Any new definitions for words and terms to be introduced within the scope of the consolidation exercise would only seek to clarify and not change the policy and legal effect of the existing law. References made by those who responded to the consultation suggesting further definitions for certain terms or words in the GPDO will be considered and inform the consolidation of the GPDO, which will be undertaken as part of a future programme of work.
18-15	We recommend that: 1) the provisions of the English language version of the Bill equivalent to sections 55, 171, 183, 196A and 214B and Schedule 3 of the TCPA 1990 should be framed by reference to a "dwelling", rather than a "dwellinghouse"; and 2) the interpretation section of the Bill should include a definition of the term "dwelling", to the effect that it includes a house and a flat.	18-15(1) – Accept 18-15(2) – Accept in principle	The Welsh Government agrees the term "dwellinghouse" should be replaced with "dwelling" in the consolidation Bill, as it represents a more commonly understood and encountered term that will improve the accessibility of the legislation. We note the Law Commission's view that a definition should be introduced to the effect that dwelling includes both a house and a flat. This will require detailed consideration during the course of drafting the Bill in order to ensure no unintended consequences arise. We also note the Commission's view that introducing the definition in the Bill will then automatically apply to existing subordinate legislation made under it. This raised some concerns by respondents on whether the suggested definition for the Bill might result in unintended consequences given the existing definition in subordinate legislation (in the GPDO) is different to that proposed, which expressly excludes flats. The concern being that a definition in the consolidation Bill could potentially carry over and apply to the GDPO resulting in flats automatically benefiting from greater and unsuitable permitted development rights. As a result of recent legislative changes, the Commission's view on this specific matter is no longer correct. Definitions in the consolidation Bill will not automatically apply to existing secondary legislation or new secondary legislation made under it, nor will they prevent subordinate legislation using different terms and definitions where appropriate. Consideration will

			be given to what definitions are appropriate to the secondary legislation made under the consolidation Bill at the time of drafting.
18-16	We recommend that the Bill should include a provision to the effect that the curtilage of a building is the land closely associated with it, and that in determining whether a structure is within the "curtilage" of a building, the factors to be considered should include: 1) the physical 'layout' of the building, the structure, and the surrounding buildings and land; 2) the ownership, past and present, of the building and the structure; and 3) their use and function, past and present.	Accept in principle	The Welsh Government agrees with the Law Commission's view that it is impossible to devise an exhaustive definition of the term "curtilage". Establishing the extent of the "curtilage" of a building or whether a structure / building is within the "curtilage" is a matter of fact and degree that can only be considered on a case by case basis. Notwithstanding this, we agree it may be helpful to have a definition that provides users and operators of the planning system with a better understanding of the term and a starting point in their consideration of this matter. The Law Commission's recommended approach is sensible and setting out the factors identified by the Court of Appeal in Attorney General ex rel. Sutcliffe v Calderdale may provide a sensible starting point in the assessment of the curtilage of a building or whether a structure / building falls within it. However, the precise wording will require further and careful consideration during the drafting of the consolidation Bill, for example to ensure it does not prevent other matters / issues from being taken into consideration. The conclusion of this detailed exercise will inform our decision on whether it is more appropriate to be included in statute or guidance, as it may raise further issues for consideration.
18-17	We recommend that the interpretation section of the Bill should contain definitions of the following terms: 1) "agriculture" and "agricultural", along the lines of the definition currently in section 336 of the TCPA 1990, with the addition of a reference to farming in line with those currently in section 147 and 171; and 2) "agricultural land" and "agricultural unit", broadly in line with the definition in Part 6 of Schedule 2 to the GPDO; and we recommend that no further definitions of those terms should be provided in relation to purchase notices and blight notices.	Accept in principle	The Welsh Government agrees a single definition of "agriculture" and "agricultural" in the interpretation section of the Bill might provide greater simplification, accessibility and clarity to users of the system. We agree the reference in sections 147 and 171 of the TCPA 1990 to the definition of "agricultural" in the Agricultural Act 1947 may be unnecessary, as it is very similar to the existing definition of "agriculture" provided in section 336 of the TCPA 1990. However, it is not clear what the additional reference to "farming of land" in sections 147 and 171 add to this definition that requires its retention. Further consideration will be given during the drafting of the Bill to how simplification could be achieved. With regard to defining "agricultural land" and "agricultural unit", the Welsh Government agrees with the principle of using the same definition for each of these terms for both the Bill and the GPDO. However, the use of the same definition and the suggested approach of basing the definitions in the Bill on those currently in the GDPO will require further consideration during the drafting of the Bill in order to ensure they do not result in any unintended consequences.
18-18	We recommend that the following provisions, which appear to be obsolete or redundant, should not be included in the Bill: 1) section 314 of the TCPA 1990 (apportionment of expenses by county councils); 2) section 335 of the TCPA 1990 (relationship between planning legislation and other legislation in force in 1947); and 3) Schedule 16 to the TCPA 1990 (provisions of the Act applied or modified by various other provisions in the Act), other than Part 3, which should retained in relation to the provision restating section 318 of the TCPA 1990.	18-18(1) and 18-18(2) – Accept 18-18(3) – Accept in principle	The Welsh Government agrees with the Law Commission's view and notes the overwhelming support of respondents to this recommendation that sections 314 and 335 of the TCPA 1990 should not be carried forward into the consolidation Bill. We agree that Schedule 16 should not be kept in its current form, however we will need to ensure that the existing effect of provisions that refer to Schedule 16 is preserved. How this is best achieved will be considered during the course of drafting.