REPORT TO DEVELOPMENT CONTROL COMMITTEE

15 MARCH 2018

REPORT OF THE CORPORATE DIRECTOR COMMUNITIES
BRIDGEND CBC LOCAL PLANNING AUTHORITY

RESPONSE TO THE LAW COMMISSION'S CONSULTATION – PLANNING LAW IN WALES

1. Purpose of Report

1.1 The Welsh Government is preparing a new Planning Code, incorporating almost all of the 1990 Act and many of the other Acts that added to it. The Law Commission is working on technical reforms to simplify and improve how the system works in practice.

1.2 The Report informs Members of the Local Planning Authority's response to the Law Commission Consultation. The Report provides Members with a copy of the Local Planning Authority's response to the consultation. Full details of the consultation can be found using this weblink:

https://www.lawcom.gov.uk/project/planning-law-in-wales/

2. Connection to Corporate Improvement Plan/Other Corporate Priorities

2.1 The delivery of the County Borough's statutory planning function has links to the Council's corporate priorities in particular number 1 – supporting a successful economy.

3. Background

3.1 The Law Commission produced a scoping paper in June 2016 setting out their preliminary proposals on the nature and extent of the consolidation and reform exercise. They received a variety of responses from all key stakeholders.

3.2 The Law Commission produced a full Consultation Paper setting out their conclusions as to the scope of the project and outlining their proposals for technical reforms.

3.3 The consultation paper was published on 30 November 2017 and the consultation process lasted for three months – until 1 March 2018. The BCBC response is attached as **Appendix 1**.

3.4 The responses are now being analysed by the Law Commission and they will produce a final report to the Welsh Government, which will inform the production of the new Planning Code. The Code is expected to obtain Royal Assent in 2020.

4. Wellbeing of Future Generations (Wales) Act 2015

4.1 The well-being goals identified in the Act are:

- A prosperous Wales
- A resilient Wales

- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

4.2 The duty has been considered in the production of this report.

5. Next Steps

5.1 The Local Planning Authority's response to the consultation has been formally submitted to the Law Commission.

6. Recommendation

6.1 That Members note the content of this Report and the Local Planning Authority's response to the consultation (see **Appendix 1**).

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Appendix 1 – BCBC response to the Law Commission Consultation

Background documents
Link to the Law Commission consultation provided above

APPENDIX 1

Law Commission – Planning Law in Wales Consultation Paper

Formal Response from Bridgend CBC

Deadline for responses – **1st March, 2018**

5. Introductory Provisions

Consultation question 5-1.
We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code:

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 relevant considerations indicate otherwise.

Do consultees agree? **Yes**

Consultation question 5-2.
We provisionally consider that;
(1) to attempt to define relevant or material considerations in the Planning Code would cause as many problems as it would solve; and
(2) the term "relevant considerations" would be more appropriate than "material considerations."
Do consultees agree? **Yes for 1) No for 2) Material planning considerations has been a longstanding concept in planning where practitioners, the public and Town/Community Councils have developed some understanding of the term and what can and cannot be considered by the Local Planning Authority in the determination of a planning application.**

Consultation question 5-3.
We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code must have regard to any other relevant considerations.
Do consultees agree? **Yes - consultees in particular need to be reminded that their comments should be reasonably related to the scale of the development and relevant in all other respects.**

Consultation question 5-4.
We provisionally propose that a provision or provisions should be included to the effect that:

1) a body exercising any statutory function must have regard to the desirability of preserving or enhancing historic assets, their setting, and any features of special interest that they possess; and

2) a body exercising functions under the Planning Code and the Historic Environment Code must have special regard to those matters; and that "historic assets" be defined so as to 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.

Do consultees agree? **Yes**

Consultation question 5-5.

We provisionally propose that a provision should be included in the Bill, to the effect that:

1) the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-3) when exercising any function under the Code, 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; and
2) the duty to consider the effect on the use of the Welsh language is not to affect:
   - whether regard is to be had to any other consideration when exercising that function or
   - the weight to be given to any such consideration in the exercise of that function.

Do consultees agree? **Yes**

Consultation question 5-6.

We provisionally propose that a provision should be included in the Bill, to the effect that:

1) the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-4) when exercising any function under the Code, 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; and
2) the duty to consider Welsh Government policies is not to affect:
   - whether regard is to be had to any other consideration when exercising that function, or
   - the weight to be given to any such consideration in the exercise of that function.

Do consultees agree? **Yes**

Consultation question 5-7.

We provisionally consider 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 Wellbeing of Future Generations (Wales) Act 2015 to carry out sustainable development.

Do consultees agree? **Yes**

Consultation question 5-8.
We provisionally propose that a series of signpost provisions 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.
Do consultees agree? **Yes**

Consultation question 5-9.
We provisionally propose that section 53 of the Coal Industry Act 1994 (environmental duties in connection with planning) should be amended so that it no longer applies in Wales.
Do consultees agree? **Yes**

Consultation question 5-10.
In light of the previous proposals in this Chapter, we provisionally consider that there is no need for the Bill to contain a provision explaining the purpose of the planning system in Wales.
Do consultees agree? **Yes**

Consultation question 5-11.
We provisionally consider 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 Code as "inspectors" or "examiners", but in either case in such a way as to make it clear that this does not prevent the Welsh Ministers appointing for a particular purpose a person other than an employee of the Planning Inspectorate.
Do consultees agree, and if so which term do consultees think is most appropriate? **Yes – "Inspectors" for Appeals and "Examiners" for Development Plans to clarify the distinction between the two roles.**

Consultation question 5-12.
We provisionally consider that the Bill should not include the provisions currently in the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as local planning authorities.
Do consultees agree? **Yes**

Consultation question 5-13.
We consider that the term "planning authority" should be used in the Planning Code in place of the terms "local planning authority" and "minerals planning authority" in existing legislation.
Do consultees agree? **No – the term Local Planning Authority (LPA) should be retained in Wales for continuity and to differentiate between the body responsible for the planning function at the local level and any bodies responsible for Strategic planning in the future. LPA should also include "minerals planning authority."**

6. Development Plan

Consultation question 6-1.
We provisionally consider that Part 6 of the PCPA 2004 (development plans), as amended by the PWA 2015, should be restated in the Planning Code, subject to any necessary transitional arrangements relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter.
Do consultees agree? **Yes**

Consultation question 6-2.
We provisionally propose that the provisions currently in the Planning and Energy Act 2008 are not restated in the Bill; consideration is given in due course to:

- including equivalent provisions in guidance; and
- making appropriate amendments to the Building Regulations.

Do consultees agree? **Yes**

Consultation question 6-3.
In light of the existence of duties to carry out sustainability appraisals of the NDF and strategic and local development plans, currently under Part 6 of the PCPA 2004,

- is there a continuing requirement for a separate appraisal to be carried out of their environmental impact, as currently required by the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004? **No**
- are the 2004 Regulations still required in relation to plans and programmes other than the NDF and development plans? **No** or
- do the 2004 Regulations need amendment or simplification in any way? **No**

Consultation question 6-4.
We provisionally propose that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill.
Do consultees agree? **Yes**

Consultation question 6-5.
We consider 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.
Do consultees agree? **Yes**

7. The need for a planning application

Consultation question 7-1.
We provisionally propose that the power of the Welsh Ministers to remove certain categories of demolition from the scope of development, currently in TCPA 1990 s. 55(4)(g), should not be restated in the new Bill, but that the same result should be achieved by the use of the GPDO.
Do consultees agree? **Yes**

Consultation question 7-2.
We provisionally propose 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 floorspace of a building, whether underground or otherwise, is development.
Do consultees agree? **Yes**

Consultation question 7-3.
It would be possible to incorporate in the Bill a definition of "engineering operations", to the effect that they are operations normally supervised by a person carrying on business as an engineer, and include:

(1) the formation or laying out of means of access to a highway; and
(2) the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there.

We invite the views of consultees. **This definition does not go far enough. The point about landscaping not being a form of works that would require supervision by an engineer is a good one. The same goes for site clearance/earthworks in advance of the implementation of consent, perhaps to comply with Ecological windows/licences. There is an opportunity to clarify the nature and level of works that are required to formally implement (and protect) a consent.**

Consultation question 7-4.
We provisionally propose that there should be an explicit provision as to the approval of use classes regulations by the negative resolution procedure.
Do consultees agree? **Yes**

Consultation question 7-5.
We provisionally propose that section 55(3)(a) should be clarified by providing that the use as one or more dwellings of any building previously used as a different number of dwellings shall be taken to involve a material change in the use of the building and of each part of it which is so used.
Do consultees agree? **No. The requirement for planning permission has normally revolved around the nett creation of new residential units. The amalgamation of two flats back into one dwelling (or one bigger flat) should not require planning permission as it is unlikely to have a negative effect on the environment or the appearance of the building. This would also not be wholly consistent with the recent additional Use Class for HMOs (C4) where there is a permitted change back to a dwelling (C3).**

Consultation question 7-6.
We provisionally propose that section 55(2)(d) to (f) of the TCPA 1990 should be clarified by providing that the following changes of use should be taken for the purposes of the 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 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 an order 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 order, of any part of the buildings or the other land, from that use to any other use within the same class.

Do consultees agree? **Yes**

Consultation question 7-7.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 7-8.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 7-9.
We provisionally propose that sections 88 and 89 of the TCPA (planning permission granted by enterprise zone scheme) should not be restated in the new Planning Bill.
Do consultees agree? **Yes**

Consultation question 7-10.
We provisionally propose that sections 82 to 87 of and Schedule 7 to the TCPA (simplified planning zones) should not be restated in the new Planning Bill.
Do consultees agree? **Yes**

Consultation question 7-11.
We provisionally propose that the provisions relating to time limits and certificates of lawfulness, currently included in TCPA 1990, ss 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, s 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).
Do consultees agree? **Yes**

Consultation question 7-12.

We provisionally propose that a provision should be included to the effect that:

(1) an application for planning permission for an operation or change of use is assumed to include an application for a certificate of lawfulness of proposed use or development (CLOPUD) in relation to the operation or change of use; and

(2) an application for planning permission to retain an operation or change of use already carried out without permission is assumed to include an application for a certificate of lawfulness of existing use or development (CLEUD) in relation to the operation or change of use.

Do consultees agree? **No - This would mean that every application for consent is also an application for a certificate. Different law applies to each and the consideration of a certificate requires evidence as to the historic use of the site or the history of operational development which we would not ask for on a planning application. Would LPAs have to issue two decision notices on every application?**

If we were going to approve an application for consent with conditions do we also have to consider if, in fact, it is lawful and therefore no conditions can be imposed?

This will be an unnecessary burden on Officers and this would and also create confusion for Members, if an application is referred to Planning Committee, and for objectors, where we turn down a planning application but grant a certificate which has not been requested by the applicant. This is likely to cause confusion where applicants specifically want a planning permission rather than a certificate.

In addition, some elements of the proposal (or retrospective application) may not require planning permission or are immune from enforcement action but other elements will. Officers routinely review the lawfulness of a development or proposal and include that consideration within the body of their reports.

It would be preferable to say that if they apply for consent that means a certificate cannot be requested until the relevant time limits (4 years or 10 years) has passed from the date of the application.

8. Applications to the Planning Authority

Consultation question 8-1.
We provisionally consider that the law as to planning applications could be simplified, by:

(1) abolishing outline planning permission; **Yes but only for small sites where there is no real merit in obtaining Outline consent. On larger sites where there are likely to be several phases of development over an extended period of time there is no need to seek all of the information up front only an agreed development brief or design code.**
(2) requiring that every application for planning permission for development – whether that development is proposed, or is under way, or has been completed – being accompanied by plans, drawings and information sufficient to describe the proposed development; **Yes**
(3) enabling the items to accompany applications to be prescribed in regulations, so as to include (so far as relevant) details of

- the approximate location of all proposed buildings, routes and open spaces,
- the upper and lower limit for the height, width and length of each building proposed, and
- the area or areas where access points will be situated; **No – this goes against the ethos of frontloading applications and will result in delays in determining applications.**

(4) enabling an applicant to invite the planning authority to grant permission subject to conditions reserving for subsequent approval one or more matters not sufficiently particularised in the application; **No – it is important that the LPA and statutory consultees/interested third parties have access to the relevant information from the outset.**
(5) enabling an authority

- to grant permission subject to such conditions (whether or not invited to do so); **Yes** and
- to notify the applicant that it is unable to determine an application without further specified details being supplied. **Yes**

Consultation question 8-2.
We provisionally propose 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 new Bill.
Do consultees agree? **Yes – in light of the ability to serve an invalid notice. In practice, LPAs tend to put right errors rather than refuse to deal with an application. However, where it is shown that an applicant has misled the LPA, any consent issued should automatically be made invalid and that any subsequent application should be at the applicant's full cost again.**

Consultation question 8-3.
We provisionally propose that section 65(5) of the TCPA 1990 – providing that planning authorities must not entertain applications that are not accompanied by ownership certificates – should not be restated in the new Bill.
Do consultees agree? **No**. **Whilst the LPA do not need to know who owns the land (i.e. not a material consideration), the Certificate should be completed and**

provided as part of the application form because, if it is not submitted with the application, the LPA would not know who owns all or part of the land and a certificate that has not been completed correctly could remove the applicant's right to appeal as the PINS would not entertain an appeal with incorrect ownership details. The applicant would then have to apply again and serve notice on the correct land owners leading to abortive costs/delays. In addition, if we do not know who owns the land and if it is not the applicant themselves, consultation may be prejudiced. The outcome of the proposal would be added pressure on LPAs to carry out their own title queries on all applications.

Consultation question 8-4.
We provisionally propose that the requirements of section 65(2) of the TCPA 1990 and secondary legislation made under that provision as to

(1) the notification of planning applications to agricultural tenants and
(2) the notification of minerals applications

should be clarified, to ensure that they are only drawn to the attention of applicants in relevant cases.
Do consultees agree? **Yes**

Consultation question 8-5.
We provisionally propose that section 70A of the TCPA 1990 (power to decline similar applications) should be restated in the Planning Bill as it stands following amendment by PCPA 2004, the Planning Act 2008 and the P(W)A 2015.
Do consultees agree? **Yes**

Consultation question 8-6.
We provisionally propose that section 70B of the TCPA (designed to discourage or prevent twin-tracking) should not be restated in the Planning Bill.
Do consultees agree? **Yes although, even with an appeal against non-determination, LPAs now have 4 weeks to determine an application.**

Consultation question 8-7.
We provisionally consider that it would be helpful to include in the Bill a provision requiring each planning authority to prepare a statement specifying those within the community whom it will seek to involve in the determination of planning applications.
Do consultees agree? **No. This is beyond the scope of Article 12 of the DMPWO 2012 (as amended). A Community Involvement Scheme would only be useful in the production of a Development Plan.**

Consultation question 8-8.
We provisionally propose that the DMP(W)O 2012 should be amended to make it clear that representations as to a planning application received after the end of the 21-day consultation but before the date of the decision should be taken into account if possible, but that there should be no requirement to delay the consideration of the application.
Do consultees agree? **Yes - a cut off period (say 28 days) would be useful as the LPA operate a scheme of referring applications to DC Committee if it is the subject of three or more objections.**

Consultation question 8-9.
We provisionally consider that the distinction between conditions and limitations attached to planning permissions should be minimised, either:

(1) by defining the term "condition" so as to include "limitation", or

(2) by making it clear that planning permission granted in response to an application or an appeal (as opposed to merely permission granted by a development order, as at present) may be granted subject to limitations or conditions.

Do consultees agree? **Yes**

Consultation question 8-10.
We provisionally propose that the provisions in the TCPA 1990 as to the imposition of conditions should be replaced in the Bill with a general power for planning authorities to impose such conditions or limitations as they see fit, provided that they are:
(1) necessary to make the development acceptable in planning terms,
(2) relevant to the development and to planning considerations generally,
(3) sufficiently precise to make it capable of being complied with and enforced, and
(4) reasonable in all other respects.
Do consultees agree? **Yes**

Consultation question 8-11.
In addition to the general power to impose conditions and limitations, it would be possible to make explicit in the Code powers to impose specific types of conditions and limitations, considered in consultation questions 8-11, 8-14 and 8-16.
Do consultees consider that the powers to impose all or any of these types of conditions (or others) should be given a statutory basis – either in the Bill or in regulations – or should they be incorporated in Government guidance on the use of conditions? **Incorporated into WG Guidance**

Consultation question 8-12.
We provisionally propose that the Code should include a provision enabling the imposition of conditions to the effect:

(1) that the approved works are not to start until some specified event has occurred (a *Grampian* condition); or

(2) that the approved works are not to be carried out until:

- a contract for some other development has been made; and
- planning permission has been granted for the development for which the contract provides.

Do consultees agree? **Yes**

Consultation question 8-13.
We consider that it might be helpful:

(1) for a planning authority to be given a power (but not necessarily a duty) to identify from the outset the pre-commencement conditions attached to a particular planning permission that are "true conditions precedent", which go to the heart of the permission, so that they must have been complied with before the permission can be said to have been lawfully implemented (the second category identified by Sullivan J in *Hart Aggregates v Hartlepool BC*), as distinct from other conditions precedent;

(2) for an applicant to have a right to request an authority to identify which of the conditions attached to a particular permission that has been granted are true conditions precedent; and

(3) for an applicant to have, in either case, a right to appeal against such identification, without putting in jeopardy the substance of the condition itself.

Do consultees agree? Is there any other way in which the consequences of noncompliance, or belated compliance with commencement conditions could usefully be clarified? **Yes to 1) (power but not duty) and 3) (although this could be circumvented by identifying a consistent approach across Wales with regard to the type of conditions that are likely to go to the heart of the consent but no to 2) as that would be an unnecessary burden on LPAs and would only serve to encourage developers to implement some schemes without discharging the conditions attached to the consent.**

If a condition is not complied with prior to the development going ahead the enforcement of that condition is a matter for the LPA but all other conditions would still apply and developers could not extricate themselves from all conditions just because one condition, that is seen as going to the heart of the permission, has been breached.

Consultation question 8-14.

We provisionally propose that the Bill makes plain:

(1) that development must be commenced by the date specified in any relevant condition;

(2) that any phases must be commenced by the date specified in any condition relevant to that phase; and

(3) that in the absence of any such condition the development must be commenced within five years of the grant of permission.

Do consultees agree? **Yes**

Consultation question 8-15.

We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect that the development or use of land under the control of the applicant (whether or not it is land in respect of which the application has been made) should be regulated to ensure that the approved development is and remains acceptable in planning terms.

Do consultees agree? **Yes**

Consultation question 8-16.

We provisionally propose 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 the buildings or works authorised by the permission be removed, or the authorised use be discontinued at the end of the period, and that works be carried out at that time for the reinstatement of land.

Do consultees agree? **Yes**

Consultation question 8-17.
We provisionally consider 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) time-limited permissions issued under what is now section 72(1)(a), and

(2) certain time-limited permissions issued between 29 August 1960 and 31 December 1968.

Do consultees agree? **Yes**

Consultation question 8-18.
We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect:

(1) that 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) that any damage caused to the building or land by the authorised works be made good after those works are completed; or

(3) that 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.

Do consultees agree? **Yes**

Consultation question 8-19.
We provisionally consider 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.
Do consultees agree? **Yes**

Consultation question 8-20.
We provisionally propose that a planning authority should be able in an appropriate case to decline to determine an application for the approval of one detailed matter without at the same time having details of another specified matter.
Do consultees agree? **Yes. Full details of each condition should be included within each discharge of condition application so that the condition as whole can be discharged/agreed in one go.**

Consultation question 8-21.
We provisionally propose that the Bill should clarify the existing law and procedures as to the approval of details required by:

(1) a condition of a permission granted by a development order;

(2) a requirement imposed by a planning authority following a notification of proposed works in a relevant category of development permitted by a development order.

Do consultees agree? **Yes**

Consultation question 8-22.
We consider that it might be helpful for there to be a time-limit within which the planning authority can respond to a notification of a proposal to carry out development in a relevant category (for example, buildings for agriculture and

forestry), such that an applicant can proceed if no response has been received to the notification.
Do consultees agree? **Yes – this is already in place for Agri, Forestry and Telecomms developments.**

Consultation question 8-23.
We provisionally consider that it might be helpful to bring together the procedures for seeking amendments to planning permissions, currently under section 73 and 96A of the TCPA 1990, into a single procedure for making an application for any variation of a permission – whether major or minor – which can be dealt with by the planning authority appropriately, in light of its assessment of the materiality of the proposed amendment.

We envisage that the authority would be able to choose to permit either:

(1) both the original proposal and a revised version, with the applicant able to implement either; or

(2) only the revised version, which would thus supersede the original.

Do consultees agree? **Yes to both options for flexibility although it is hard to see any case where we would allow either pp to be implemented. If the proposal is to go ahead (i.e. that either could be implemented) the legislation should include a duty on the developer to inform the LPA in writing which one they have implemented.**

Consultation question 8-24.
We provisionally propose that the Planning Code should extend the scope of section 96A (approval of minor amendments) to include approvals of details.
Do consultees agree? **Yes. It is the same fee for discharge of conditions as NMMA's.**

Consultation question 8-25.
We provisionally propose that an expedited procedure should be available for the determination of an application to vary a permission where the implementation of the permitted development is under way.
Do consultees agree? **Yes – subject to more detail.**

Consultation question 8-26.
We provisionally propose that the Welsh Ministers should have powers

(1) to make regulations requiring applications in a particular category to be notified to them, and

(2) to make a direction requiring a particular application to be so notified, so that they may decide whether to call it in for their decision.

Do consultees agree? **Yes**

Consultation question 8-27.
We provisionally propose that, where the Welsh Ministers decide to call in an application for planning permission, they (rather than, as at present, the planning authority) should be under a duty to notify the applicant.
Do consultees agree? **Yes**

Consultation question 8-28.
We provisionally consider that the following provisions currently in the TCPA 1990 should not be restated in the Planning Bill, but that equivalent provisions should be included in the DMP(W)O 2012 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 whilst it is proceeding).

Do consultees agree? **Yes**

Consultation question 8-29.
We provisionally propose 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) (referring to 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) of the TCPA 1990 (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

(6) section 332 (power of Welsh Ministers to direct that planning applications should also be treated as applications under other legislation).

Do consultees agree? **Yes**

9. Applications to the Welsh Ministers

Consultation question 9-1.
We provisionally consider 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 Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.
Do consultees agree? **Yes**

Consultation question 9-2.
We provisionally consider 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.
Do consultees agree? **Yes – However, clarification is needed regarding which body will determine secondary consents.**

Consultation question 9-3.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 9-4.
We provisionally propose that sections 62D to 62L of the TCPA 1990 should be restated in the new Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.
Do consultees agree? **Yes**.

Consultation question 9-5.
We provisionally propose that section 101 of and Schedule 8 to the TCPA 1990 (planning inquiry commissions) should not be restated in the new Planning Code.
Do consultees agree? **Yes**

10. The provision of infrastructure and other improvements

Consultation question 10-1.
We provisionally consider 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 broadly as they stand into the Planning Code, pending any more thoroughgoing review that may take place in due course.
Do consultees agree? **Yes although would this make it more difficult to repeal CIL if that is the desired course of action?**

Proposal 10-2.
We provisionally propose that provisions relating to planning obligations, currently in sections 106 to 106B of the TCPA 1990, should be incorporated broadly as they stand into the Planning Code, pending any more thoroughgoing review that may take place in due course. **Agreed**

Consultation question 10-3.
We provisionally consider that the rules as to the use of planning obligations, currently in regulation 122 of the CIL Regulations, should be included within the new Planning Bill.
Do consultees agree? **Yes although it would make sense to reconsider the CIL regulations before the rules/tests are embodied in statute.**

Consultation question 10-4.
We provisionally consider that it might be helpful for a provision to be included in the Bill whereby a planning agreement under what is now section 106 of the TCPA 1990 – but not a unilateral undertaking – could include any provision that could be included in an agreement under section 278 of the Highways Act 1980 (execution of highway works), provided that the highway authority is a party to that agreement.
Do consultees agree? **Yes – but subject to a caveat that the highways issues are not extensive in scope as that would delay the issue of planning permission.**

Consultation question 10-5.
We provisionally consider that it would be helpful to make the enforcement of a planning obligation under section 106 of the TCPA 1990 more straightforward by including the breach of such an obligation within the definition of a breach of planning control.
We invite the views of consultees, including as to the practicalities of such a proposal. **On the face of it, this looks like a straightforward move. Time limits would have to be factored in to the approach and a new enforcement power would be required such as a BCN equivalent for a breach of a S.106. Also, should enforcement action only apply to the covenanter/signatory that has not satisfied a particular requirement/schedule?**

Consultation question 10-6.
Section 106(12) empowers the Welsh Ministers to provide regulations for the breach of an obligation to pay a sum of money to result in the imposition of a charge on the land, facilitating recovery from subsequent owners.

No such regulations have been made; does their absence cause a problem in practice? **No as this already effectively happens as planning obligations are entered onto the Local Land Charges Register.**

It would be a useful power as LPAS rely on developers to "play fair" in discharging their obligations. It may be more useful to provide that 106s must be registered in the Land Registry as well as local land charges and to give LPAs a specific power to require bonds to secure obligations.

Consultation question 10-7.
We provisionally propose that the use of standard clauses should be promoted in Welsh Government guidance.
Do consultees agree? **Yes**

Consultation question 10-8.
We provisionally consider that the introduction of a procedure to resolve disputes as to the terms of a section 106 agreement in Wales (along the lines of Schedule 9A to the TCPA 1990, to be introduced in England by the section 158 of the Housing and Planning Act 2016) might be useful.
Do consultees agree in principle, and what should be the features of such a procedure? **Yes. Resolution over viability should be undertaken by an open book review by the independent District Valuer at the applicant's cost.**

Consultation question 10-9.
We provisionally consider that 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 to be provided (along the lines of section 106ZB of the TCPA 1990, introduced by section 159 of the 2016 Act with regard to obligations as they relate to the provision of affordable housing) might be useful.
Do consultees agree in principle, and what categories of benefits might most appropriately be subject to such a procedure? **Yes – but to Affordable Housing only, as is the case in England. However, it might be a better solution for the WG to produce guidance on obligations and, if a developer wants to challenge the obligation, they can lodge an appeal and offer a UU at the appeal stage which reflects the WG guidance.**

Consultation question 10-10.
We provisionally propose that planning authorities should be able to enter into planning obligations to bind their own land in appropriate cases.
Do consultees agree? **Yes. The existing restrictions can frustrate the disposal of Council owned assets, though it can be overcome.**

Consultation question 10-11.
We provisionally propose that a person proposing to enter into a contract for the purchase of land should be able to enter into a planning obligation so as to bind that land, which would take effect if and when the relevant interest is actually acquired by that person.

Do consultees agree? **Yes if the S106 is only signed after the land has been acquired by the applicant. More details on how this would work in practice would be necessary.**

Chapter 11: Appeals and other supplementary provisions

Consultation question 11-1.
We provisionally propose that the provision, currently in section 79(1) of the TCPA 1990, as to the powers of the Welsh Ministers on an appeal should be amended so as to make it plain that they are required to consider the application afresh – as opposed to having a power to do so, as at present.
Do consultees agree? **Yes**

Consultation question 11-2.
We provisionally propose that the Bill should make it clear that all appeals (including those relating to development proposals by statutory undertakers) are to be determined by inspectors or examiners, save for

(1) those in categories that have been prescribed for determination by Welsh Ministers; and

(2) those that have been specifically recovered by them (in case-specific directions) for their determination.

Do consultees agree? **Yes**

Consultation question 11-3.
We provisionally propose that the power to appoint assessors to assist inspectors to determine appeals 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 applications determined on the basis of written representations.

Do consultees agree? **Yes**

Consultation question 11-4.
We provisionally propose that the changes proposed in consultation questions 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.

Do consultees agree? **Yes**

Consultation question 11-5.
We provisionally propose that the legislation should state that, in a case where there has been an appeal to the Welsh Ministers, the start of the period within which a purchase notice can be served is the date of the decision of the Welsh Ministers on the appeal.
Do consultees agree? **Yes**

Consultation question 11-6.
We provisionally propose that the Planning 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.
Do consultees agree? **Yes**

Consultation question 11-7.
We provisionally consider that it would not be appropriate to bring together the powers currently in section 247, 248, 253 to 257 of the TCPA 1990 (relating to highways affected by development) and those in section 116, 118 and 119 of the Highways Act 1980.
Do consultees agree? **Yes**

Consultation question 11-8.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 11-9.
We provisionally propose that decisions relating to orders under section 252 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.
Do consultees agree? **Yes**

Chapter 12: Unauthorised development

Consultation question 12-1.

We provisionally consider that the provisions currently in sections 171C and 330 of the TCPA 1990 could be conflated into a **single power** for the Welsh Ministers or a planning authority to serve a "planning information notice" on the owner and occupier of land or any person who is carrying out operations or other activities on the land or is using it for any purpose, requiring the recipient to supply information as to:

(1) the interest in the land held by the recipient of the notice and by any other person of whom the recipient is aware;

(2) the use or uses of the land and when they began; and

(3) the operations and other activities now taking place of the land and when they began.

Where it appears that there has been a breach of planning control, such a notice may also:

(4) require the recipient to supply information as to:

- whether any uses or operations specified in the notice are being or have been carried out on the land;
- any person known to be using or have used the land or carried out any operations on it;
- any planning permission that may have been granted, and any conditions or limitations attached to such a permission; or
- any reasons why permission is not required for any particular use or operation; and

(5) request a meeting at which the recipient can discuss the matters referred to in the notice.

Do consultees agree? **Yes. The serving of a planning information notice should constitute enforcement so that the time limits run from the service of such a notice. This provision would apply from the first service of such a notice so the LPA cannot renew time limits indefinitely by serving a notice.**

Consultation question 12-2.

We provisionally propose 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 all property in use as a dwelling.

Do consultees agree? **Yes**

Consultation question 12-3.

We provisionally consider that the law as to concealed breaches of planning control should remain as it is, subject to the common law principles developed in Welwyn Hatfield Council v Secretary of State [2010] UKSC 15, [2011] 2 AC 304, and in particular that the "planning enforcement order" procedure, introduced by the Localism Act 2011, should not be included in the Bill.

Do consultees agree? **Yes**

Consultation question 12-4.

We provisionally propose that section 173ZA should be amended, to prevent the period for enforcement action being extended indefinitely, so as to provide either:

(1) that an enforcement warning notice can be served during the period of 4 or 10 years within which enforcement action can be taken, but that the service of such a notice does not extend that period; or

(2) that where an enforcement warning notice has been served, the period for taking other enforcement action starts on the date on which the notice was served.

Do consultees agree, and if so which option seems more appropriate? **Yes. Option 2 is favoured in that it should only extend the time once. The service of an EWN would only occur where the LPA considers the unauthorised development/works/activity to be acceptable subject to conditions.**

Consultation question 12-5.

We provisionally propose 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 (defined so as to include a house and a flat).

Do consultees agree? **Yes**

Consultation question 12-6.

We provisionally propose 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 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:

- state that a TSN has been issued;
- summarise the effect of the TSN; and
- 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.

Do consultees agree? **Yes**

Consultation question 12-7.

We provisionally propose that:

(1) it should be an offence to contravene a temporary stop notice that has come into effect (rather than 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

- had not been served with a copy of the notice; and
- did not know, and could not reasonably have been expected to know, of the existence of the notice.

Do consultees agree? **Yes**

Consultation question 12-8.
We provisionally propose that the provisions relating to breach of condition notices, currently in section 187A of the TCPA 1990, be amended so 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, coming into force on a date specified by reference to the date of service).
Do consultees agree? **Yes**

Consultation question 12-9.
We provisionally propose that an enforcement notice should be required to specify:

(1) the steps that the authority requires to be taken, or the activities that are to cease, in order to achieve, wholly or partly, all or any of the purposes set out in section 173(4) of the TCPA 1990; and

(2) which one or more of those purposes it considers will be achieved by taking those steps.

Do consultees agree? **Yes**

Consultation question 12-10.
We provisionally propose that there should be an explicit provision in the Bill, incorporating the principle in Murfitt v Secretary of State and subsequent cases, 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 integral to the making of the material change of use.
Do consultees agree? **Yes**

Consultation question 12-11.
We provisionally propose that the relevant regulations should require that the explanatory note accompanying an enforcement notice should include a statement (in line with the principle in Mansi v Elstree RDC) to the effect that the notice does not restrict the rights of any person to carry out without a planning application any development that could have been so carried out immediately prior to the issue of the notice.
Do consultees agree? **Yes**

Consultation question 12-12.
We provisionally propose 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 including ground (a) may do all or any of the following:

- grant planning permission for any or all of the matters that are alleged to have constitutes a breach of control;
- discharge the condition that is alleged to have been breached; or

- issue a certificate of lawfulness, insofar as they determine that the matters alleged by the notice to constitute a breach of control were in fact lawful.

Do consultees agree? **Yes**

Consultation question 12-13.

We provisionally consider 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 having not been served as required by section 172(2) (which refers to service on owners and occupiers etc) rather than as required by section 172 (which also refers to the time limits for service).

Do consultees agree? **Yes**

Consultation question 12-14.

We provisionally consider 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 as not to duplicate the requirements of the relevant secondary legislation.

Do consultees agree? **Yes**

Consultation question 12-15.

We provisionally propose that there should be included in the part of the Code dealing with enforcement a provision equivalent to section 285(1) and (2), 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. **Yes**

Consultation question 12-16.

We provisionally propose 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.

Do consultees agree? **Yes**

Consultation question 12-17.

We provisionally propose that the provisions relating to stop notices, currently in section 184 of the TCPA 1990, should be amended so 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).

Do consultees agree? **Yes**

Consultation question 12-18.

We provisionally propose:

(1) that it should be an offence to contravene a stop notice that has come into effect; and

(2) that it should be a defence to a charge of such an offence to prove that the accused

- had not been served with a copy of the stop notice, and

- did not know, and could not reasonably have been expected to know, of the existence of the notice.

Do consultees agree? **Yes**

Consultation question 12-19.

We provisionally propose that:

(1) a stop notice should cease to have effect when the planning authority makes a decision to that effect; and

(2) that such a decision should be publicised as soon as possible after it has been made, by the display of a suitable site notice and the notification of all those who were notified of the original notice.

Do consultees agree? **Yes**

Consultation question 12-20.

We provisionally consider that where a stop notice is served by the Welsh Ministers under section 185, and subsequently quashed, any liability to compensation arising under section 186 should be payable by them and not by the planning authority.

Do consultees agree? **Yes**

Consultation question 12-21.

We provisionally propose that the offences under section 179(2) (breach of an enforcement notice) and section 179(5) (subsequent resumption of prohibited activity) should each be framed so as to provide that a person commits an offence if:

(1) the person is in breach of an enforcement notice;

(2) the notice was at the time of the breach contained in the relevant register; and

(3) the person had been served with a copy of the notice.

Do consultees agree? **No - (2) and (3) should not have to be satisfied. If the notice was properly registered at the time of the breach then whoever breaches it should be criminally liable. Otherwise, the LPA will have to show service on each individual person as well as the registration of the notice. All of the onus of establishing service will fall on the LPA. This reform will make prosecutions in Wales for breach of an enforcement notice much harder for the LPA and is likely to make evasion much easier. We should either stick with the current section 179 or at the very least say that the offence will be made out if the notice had been properly registered.**

Consultation question 12-22.

We provisionally propose that section 172A of the TCPA (assurances as to non-prosecution for breach of an enforcement notice) should be amended so as

(1) to enable an authority to give such an assurance simply by “giving notice” to the relevant person, rather than necessarily doing so by a letter; and

(2) to enable the authority to give in response to a request from to a 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 person B had acquired the interest in the land.

Do consultees agree? **Yes**

Consultation question 12-23.
We provisionally propose 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 amended so as to refer:

(1) to the grant of planning permission generally, rather than just to permission for development already carried out; and

(2) to the grant of planning permission following the issue of an enforcement notice, rather than following the service of a copy of the notice.

Do consultees agree? **Yes**

Consultation question 12-24.
We provisionally propose 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 all be triable either summarily (in the magistrates court) or on indictment (in the Crown Court), and the maximum penalty in each case should be in either case a fine of any amount.
Do consultees agree? **Yes**

Consultation question 12-25.
We provisionally propose that the offences of

(1) reinstating or restoring buildings or works following compliance with an enforcement notice (under section 181(5) of the TCPA 1990); and

(2) failing to comply with a breach of condition notice (under section 187A(9) of the TCPA 1990) should all 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.

Do consultees agree? **Yes**

Consultation question 12-26.
We provisionally propose that sections 57(7), 302 of and Schedules 4 and 15 to the TCPA 1990, relating to pre-1948 breaches of planning control, should not be restated in the Code.
Do consultees agree? **Yes**

Chapter 13: Works affecting listed buildings and conservation areas

Consultation question 13-1.
We provisionally consider that the control of works to historic assets could be simplified by:

(1) amending the definition of "development", for which planning permission is required, to include "heritage development", that is:

(a) the demolition of a listed building; or

(b) the alteration or extension of a listed building in any manner that is likely to affect its character as a building of special architectural or historic interest; or

(c) the demolition of a building in a conservation area.

(2) removing the requirement for listed building consent and conservation area consent to be obtained for such works; and

(3) implementing the additional measures outlined in consultation questions 13-2 to 13-8, to ensure that the existing level of protection for historic assets would be maintained.

Do consultees agree? **No - If all LPAs had the delegated powers to determine LBC apps without having to refer them to Cadw then there might be scope to combine PP with LBC/CAC but there is a very real risk that the special heritage considerations would be downgraded by combining them into one application.**

More specifically:

- **'Heritage Development' – the reduced status and level of significance of buildings of "special" interest would also have the indirect impact of lessening the significance and value of non-designated sites/assets of local importance as they will not be encompassed by, or associated with, this definition. Heritage development is more difficult to define than 'Listed Building Consent'. Heritage covers a wider remit – culture/language/tourism; therefore a change could cause confusion.**

- **Removing the requirement for separate listed building consent and conservation area consent will have a significant impact on the level of consideration given to demolition and alterations to listed buildings and historic assets in conservation areas. Retaining the requirement for separate consents keeps the focus on the separate issues of demolition and development. Otherwise it is unlikely that special regard will be given to the character and significance of the conservation area, particularly where there are other competing economic/social material considerations.**

- **Implementing the additional measures outlined in consultation questions 13-2 to 13-8 is not sufficient due to the lack of an evidence base to justify the change. Evidence has been provided already from South East Wales Local Authorities which clearly demonstrates that the issue of duplication, in reality, is not a problem experienced by local planning authorities in development management and this is borne out by the statistics provided by the joint South Wales Conservation Officer Group response. For example, over the previous 3 years in Bridgend, on average the following applications**

numbers have been dealt with which clearly indicates the minimal beneficial impact that the proposed changes will have on efficiencies/clarity. When balanced against the potential harmful effect outlined above, there is a strong argument to retain the current consent regime.

Total no of apps – Average Per Year	Total of LBC apps	Total number of CAC applications	Total number of concurrent apps	Number of single appeals	Number of duel appeal	Any LDO's
798	29.3	1	25	0	0	0

- **In terms of applications and consultation, the majority of submissions, apart from the most straightforward, are likely to be large and complicated with numerous supporting documents required. This is likely to present a more complicated package of information for specialist consultees, interested parties etc. to consider, resulting in a higher risk of the heritage issues being downgraded/lost in the overall balance of the assessment of the application.**

- **The proposed changes to the consent regime are unlikely to result in the existing level of protection for historic assets being maintained. The current systems clearly allows for recording of change and assessing the cumulative effect of change on historic buildings (whether works require listed building consent/conservation area consent or not). Applicants are currently encouraged to include a comprehensive approach to applications for listed building consent to record all changes/repairs however minimal as each listed building is unique. If this is brought into the mainstream planning consent as 'heritage development', the risk is that this approach will be diluted to include only works stated in the GDPO. There is also some concern with regard to the level of expertise across Wales and whether it is sufficient to be able to deal with dual applications within planning departments and their potential impact on conservation staff.**

- **It is not clear how these proposals will impact on Cadw's role in the process and its intention to roll out delegation of listed building consent where appropriate.**

- **The potential implications of a combined consent regime is likely to be that all 'Heritage Development' applications would need to be referred to Cadw with the ensuing resource implications for them, and inevitable delays for the applicants.**

- **The timing of this proposal is unjustified, particularly in light of the Historic Environment Act and ensuing revisions to national guidance and best practice guidance.**

Consultation question 13-2.

We provisionally propose that the power to make general and local development orders should be extended to enable the grant of planning permission by order for heritage development.

Do consultees agree? **No. As each listed building has its own unique significance and value, the use of general and local development orders would be inappropriate to enable the granting of planning permission by order for heritage development. Heritage Partnership Agreements are the preferred mechanism that was recently introduced to enable this approach, the main difference being that these agreements are site/building specific.**

Consultation question 13-3.
We provisionally propose that heritage partnership agreements should be capable of granting planning permission by order for heritage development in such categories as may be prescribed.
Do consultees agree? **Yes**

It is considered that Heritage Partnership Agreements should be capable of granting planning permission by order for heritage development in such categories as may be prescribed. However, support is not offered to the principle of 'Heritage Development', therefore, it is recommended that this approach be encouraged but only under the existing consent regime.

Consultation question 13-4.
We provisionally consider 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 listed building consent or conservation area consent.
Do consultees agree? **No. There are different issues to consider with applications for Listed Building Consent and Conservation Area Consent compared to a certificate of lawfulness. Additionally, this is not an issue that has been raised as we do not receive many queries about whether works require Listed Building or Conservation Area consent only.**

Certificates of Lawfulness are not considered to be a suitable alternative to Listed Building Consent.

Support is, however, offered for the approach of pre-application advice and guidance on site and in written form, where specialist input is required, as is now common practice for conservation staff across most Welsh Local Planning Authorities. The most effective improvement to the system would be to formalise the pre-application process. It is difficult to see how certificates of lawfulness could improve on this, as they are primarily a desktop exercise with no flexibility. However, Non-Material Amendments, if applied to an LBC approval, may assist the process and should be considered as an alternative.

Consultation question 13-5.
We provisionally consider 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 exercise their powers not to include it in the list.

Do consultees agree? **1) No – an appeal is not the appropriate procedure to attempt to delist a building. 2) Yes. 3) No. 4) Yes.**

The proposal is unnecessary and is likely to encourage an increase in the number of unnecessary appeals and will cause delays. A review of the statutory list should be dealt with separately if efficiencies are paramount and complexity is to be avoided.

Consultation question 13-6.

We provisionally propose that the Bill should include provisions to the effect that:

(1) the carrying out without planning permission (or in breach of a condition or limitation attached to permission) of heritage development – defined along the lines indicated in Proposal 13-1 – be a criminal offence, punishable

- on summary conviction by imprisonment for a term not exceeding six months or a fine or both; or

- on summary conviction by imprisonment for a term not exceeding two years or a fine or both; and

(2) 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.

Do consultees agree? **Yes. If the Heritage Development proposals are implemented, then these provisions should be carried over into the new legislation. However, the position on 13-1 stands.**

Consultation question 13-7.

We provisionally propose that the Bill should include provisions to the effect that heritage development be excluded from the categories of development that are subject to time limits as to the period within which enforcement action may be taken.

Do consultees agree? **Yes. If the Heritage Development proposals are implemented, then these provisions should be carried over into the new legislation. However, the position on 13-1 stands.**

Consultation question 13-8.

We provisionally propose that the Bill should include provisions to the effect that:

(1) Where an enforcement notice is issued in relation to the carrying out of heritage development in breach of planning control, 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 Planning (Listed Buildings and Conservation Areas) Act 1990;

(2) the Welsh Ministers, in determining an enforcement appeal relating to a listed building, may exercise their powers to remove the building from the list.

(3) in determining an enforcement appeal relating to a building subject to a building preservation order, they may exercise their powers not to include it in the list.

Do consultees agree? **1) Yes. 2) No. 3) Yes. If the Heritage Development proposals are implemented, then these provisions (apart from 2) should be carried over into the new legislation. However, the position on 13-1 stands.**

Proposal 13-9.

We provisionally consider that planning permission should not be unified with scheduled monument consent.

Do consultees agree? **Yes - As Scheduled Ancient Monument Consents and Listed Building consents are not determined by the same authorities, these cannot be unified. There are greater numbers of Listed Buildings than Scheduled Ancient Monuments, and arguably, they require more upkeep and works. Listed Buildings should be given equal status to that of a SAM in the context of these proposals.**

Consultation question 13-10.

We provisionally consider that the definition of "listed building" should be clarified by making it clear that the definition 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; and

(2) in any other case, at the date on which the building was first included in the list.

Do consultees agree? **Yes. It would be welcomed if the legislation also defined curtilage, particularly due to the anomaly that listed buildings built after 1948 formally have no curtilage structures listed.**

Consultation question 13-11.

We provisionally propose 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.

Do consultees agree? **Yes**

<u>Conclusion</u>

There appears to be a perceived need for the change from the current dual application process, despite a general lack of evidence to support this future direction. Electronic submissions and issuing of decision notices/reports for Listed Building consent and Planning applications means that any duplication is minimal and this has to be weighed against the risks outlined in these comments in relation to the dilution of control and reduced protection afforded to heritage assets.

Paragraph 13.10 refers to 'unnecessary complexity or inconvenience for those who have to use it', but this is not evidenced across the authorities in the day to day management of the application process.

The number of applications these changes would affect are in fact relatively negligible and the removal of the existing consent regime is likely to negate

the time and effort invested in the past 7 years in the preparation of the Historic Environment Act and its associated guidance. The work, consultation and commitment in the development of the Act demonstrated the importance that the political fraternity places on the built heritage.

The recommendations of this report have the potential to dramatically dilute the due regard that local authorities may have for Listed Buildings and Conservation Areas.

Chapter 14: Outdoor advertising

Consultation question 14-1.
We provisionally propose that the definition of "advertisement" in the TCPA 1990 should be clarified, and included in the Bill alongside other provisions relating to advertising.
Do consultees agree? **Yes**

Consultation question 14-2.
We provisionally consider that the reference to "the display of advertisements", currently included in the statutory definition of "advertisement" in the TCPA 1990, could be omitted.
Do consultees agree? **Yes**

Consultation question 14-3.
We provisionally propose that the word "land" should be used in place of "site" and "sites":

(1) in the provisions of the Bill relating to the control of advertisements; and
(2) in the Regulations when they are next updated.

Do consultees agree? **Yes**

Consultation question 14-4.
We provisionally propose 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 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.

Do consultees agree? **Yes**

Consultation question 14-5.
We provisionally propose 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.

Do consultees agree? **Yes**

Consultation question 14-6.
We provisionally propose 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.

Do consultees agree? **Yes**

Consultation question 14-7.

We provisionally propose that deemed consent under the Advertisements Regulations should be granted for a display of advertisements that has the benefit of planning permission.

Do consultees agree? **Yes**

Consultation question 14-8.

We provisionally propose 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) be required for the display of an advertisement inside a vehicle, or on the outside of a vehicle on a public highway;
(2) deemed consent be granted for the display of an advertisement on 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.

Do consultees agree? **Yes**

Consultation question 14-9.

We provisionally propose 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 consultation question 14-6.

Do consultees agree? **Yes** And what might be the resources implications of this proposal? **Minimal provided that the fee is sufficient and covers the cost of processing the applications.**

Consultation question 14-10.

We provisionally propose that what is now 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 a site that has been used for that purpose for ten years, rather than by reference to a fixed date (currently 1 April 1974).

Do consultees agree? **Yes**

Consultation question 14-11.

We provisionally propose that the power (currently in section 224(1), (2)) for the Welsh Ministers to include in Regulations provisions similar to those governing enforcement notices should not be restated in the Bill.

Do consultees agree? **Yes**

Consultation question 14-12.
We provisionally propose that the powers currently in section 225 of the TCPA 1990 (removal of unauthorised posters and placards) and in section 43 of the Dyfed Act 1987 (removal of other unauthorised advertisements) should be replaced with a new single procedure allowing the removal of any unauthorised advertisements, subject to

(1) no advertisement being removed 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, as under section 225B of the TCPA 1990 – 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 as under section 225K.

Do consultees agree? What are the likely resource implications of this proposal? **Yes**

Consultation question 14-13.
We provisionally propose that the maximum sentence on conviction for unauthorised advertising should be increased to an unlimited fine, in line with other offences under the TCPA 1990 and the Listed Buildings Act 1990.
Do consultees agree? **Yes**

Consultation question 14-14.
We provisionally propose that it be made clear on the face of the Bill, rather than (as at present) in the Regulations, that all functions under the Code relating to advertising should be exercised in the interests of amenity and public safety.
Do consultees agree? **Yes**

Consultation question 14-15.
We provisionally propose that the provisions in section 220 of the TCPA 1990 relating to advisory committees and tribunals should not be included in the Bill.
Do consultees agree? **Yes**

Consultation question 14-16.
We provisionally propose that the provisions in section 221(1)(b), (2) of the TCPA 1990 relating to experimental areas should not be included in the Bill.
Do consultees agree? **Yes**

Consultation question 14-17.
It appears 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 is no longer of any practical utility, and should not be included in the Bill.
Do consultees agree? **Yes**

Chapter 15: Works to protected trees

Consultation question 15-1.
We provisionally consider that it would not be helpful to define a "tree" or a "woodland", in the context of what can be protected by a tree preservation order.
Do consultees agree? If they do not, what definitions would be appropriate? **Yes**

Consultation question 15-2.
We provisionally propose that the Bill should provide;

(1) that functions under the Code relating to the protection of trees should be exercised in the interests of amenity;

(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.

Do consultees agree? **Yes but in light of existing and emerging legislation in Wales (e.g. the Draft Planning Policy Wales Edition 10), should trees also be assessed in terms of their economic, social and environmental benefits?**

Consultation question 15-3.
We provisionally propose that the Bill and the Regulations made under it should provide:

(1) that tree preservation orders can in future be made to protect trees – specified either individually or by reference to an area – or groups of trees or woodlands;

(2) that area and group orders only protect those trees that were in existence at the time the order was made;

(3) that new area orders provide protection only until they are confirmed, at which time they must be converted into orders specifying the trees to be protected either individually or as groups;

(4) that existing area orders, already confirmed as such, cease to have effect after five years; and

(5) that woodland orders protect all trees, of whatever age and species, within the specified area, whether or not they were in existence at the date of the order.

Do consultees agree? **Yes to 1) 2) 3) and 5) but No to 4) as LPAs do not have the resources to review orders after 5 years.**

Consultation question 15-4.
We provisionally propose that it should be clarified that the making of a tree preservation order is to be notified to the owners and occupiers of any parcel of land on, in or above which is located any part of any of the trees protected by the order.
Do consultees agree? **Yes**

Consultation question 15-5.
We provisionally consider that there would be no benefit in bringing works to trees within the scope of development requiring planning permission.
Do consultees agree? **Yes**

Consultation question 15-6.
We provisionally consider 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 consider that the exemption 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).
Do consultees agree? **Yes**

Consultation question 15-7.
We provisionally consider 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 Bill or in the new trees regulations.
Do consultees agree? **Yes**

Consultation question 15-8.
We provisionally propose that a new exemption from consent under tree preservation regulations should be introduced, to allow the carrying out without consent of works to trees having a diameter not exceeding a specified size, save in the case of trees that were planted as a result of

(1) a requirement under section 206 of the TCPA 1990 or
(2) a condition of a planning permission or a consent to fell another tree.

Do consultees agree? **Yes although this doesn't fully recognise protected species.**

Consultation Question 15-9.
We provisionally propose that a provision should be introduced in the trees regulations (along with an appropriate enabling provision in the Bill) to enable a certificate of lawfulness to be issued in relation to proposed works to a tree.
Do consultees agree? **No. It is an unnecessary additional burden on LPAs where an application to carry out works to a TPO is sufficient.**
And what might be the resource implications of this proposal? **If taken forward, minimal, provided that the application is supported by sufficient details of the proposed works and the application fee covers the cost of processing the applications.**

Consultation question 15-10.
We provisionally propose that planning authorities should be required to acknowledge applications for consent under the trees regulations.
Do consultees agree? **Yes**

Consultation question 15-11.
We provisionally propose that 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).

Do consultees agree? **Yes - to include reference to the size of the replacement tree. The exact location of the replacement tree should be agreed with the LPA.**

Consultation question 15-12.
We provisionally propose that there should be an explicit power enabling a planning authority to waive or relax a replacement notice.
Do consultees agree? **Yes**

Consultation question 15-13.
Section 209 of the TCPA 1990 provides for regulations be made enabling a planning authority to recover any expenses it has incurred in making and enforcing a tree replacement notice; but no such regulations have yet been made.
Would such powers be helpful in ensuring that replacement trees are planted in appropriate cases? **Yes**

Consultation question 15-14.
We provisionally propose that the scope of the matters prohibited by a tree preservation order be extended to include the causing of harm to a tree:

(1) intentionally; or

(2) recklessly (for example, by the raising or lowering of soil levels around the base of a tree, or the grazing of animals in woodlands).

Do consultees agree? **Yes**

Consultation question 15-15.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 15-16.
We provisionally consider that the offence under section 210 (of contravening tree preservation regulations) and the regulations made under 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 on the person carrying out the works before the start of those works; or

(2) a copy of the order was available for public inspection at the time of the works; and

that a defence should be available to a person charged with such an offence if able to show that he or she had not been served with a copy of the order and did not know, and could not reasonably have been expected to know, of its existence.
Do consultees agree? **Yes**

Consultation question 15-17.
We provisionally consider that it would be more straightforward if an authority, on being notified under section 211 of the TCPA 1990 of proposed works to a tree in a conservation area, were to have four possible responses open to it:

(1) to allow the works (either felling of the tree or other works to it) to proceed, with no conditions (other than as to the two-year time limit);

(2) to allow the tree to be felled, subject to a condition as to a replacement tree being planted;

(3) to impose a tree preservation order, and to allow works to the tree other than felling, possibly subject to conditions; or

(4) to impose a tree preservation order, and to refuse consent for the works.

Do consultees agree? **Yes**

Chapter 16: Improvement, regeneration and renewal

Consultation question 16-1.
We provisionally propose that the Bill should be drafted so as to make clear that a notice under what is now section 215 of the TCPA 1990, requiring land to be properly maintained, can be issued where the condition of the land:

(1) is adversely affecting the amenity of part of the authority's area or the area of an adjoining authority; and

(2) does not result in the ordinary course of events from, the lawful carrying on of operations on that land or a use of that land that is lawful.

Do consultees agree? **No. This would mean that LPAs have to concern themselves with the history of any site before they can issue a s215.**

Currently s217 provides grounds to appeal a notice and the existence of a ground of appeal is a matter for the person appealing the notice. The proposed change will put the onus on the LPA and will be met with an argument that we have not taken sufficient steps unless the planning history of every site is examined. S215 is about the condition of land rather than its lawful use and this change is likely to result in a situation where s215s are very difficult to use.

Consultation question 16-2.
We provisionally propose 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 once lawful, but are no longer lawful.
Do consultees agree? **Yes**

Consultation question 16-3.
We provisionally propose that a notice under the provision in the new Code replacing section 215:

(1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service);

(2) should be "issued" (rather than "served" as at present), with a copy served on all those responsible for the maintenance of the land in question; and

(3) should contain a notice as to the rights of any recipient to appeal against it.

Do consultees agree? **Yes**

Consultation question 16-4.
We provisionally propose that the Bill should make it clear that all appeals against section 217 notices are normally to be determined by inspectors, in line with Consultation question 11-3.
Do consultees agree? **Yes. The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 came into force on 5th May 2017 and transferred S.217 (untidy land) Appeals from the Magistrates Court to PINS.**

Consultation question 16-5.
We provisionally propose that the new Planning Code could include powers, replacing those currently available under section 89(2) of the National Parks and

Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations):

(1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority's intention to carry out remedial works;

(2) to carry out itself the works specified in the notice, either

- on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or
- where no response is received to the notice;

(3) to recover the cost of such works from the owner, or to make them a charge on the land; and

(4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Do consultees agree? **Yes**

Consultation question 16-6.

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

(1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land;

(2) to carry out itself the works specified in the notice, either

- on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or
- where no response is received to the notice; and

(3) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Do consultees agree? **Yes**

Consultation question 16-7.

We provisionally propose that the Bill should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting, by enabling planning authorities:

(1) to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it;

(2) to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence; and

(3) in either case, to take direct action where necessary, and recharge those responsible where appropriate.

Do consultees agree? **Yes**

Consultation question 16-8.
We provisionally propose the amendment of

(1) Part 18 of and Schedules 32 to the Local Government, Planning and Land Act 1980 (enterprise zones), and

(2) the provisions relating to enterprise zones in the TCPA 1990 and related legislation so that they apply in future only in relation to England.

Do consultees agree? **Yes**

Consultation question 16-9.
We provisionally propose the amendment of

(1) the New Towns Act 1981, and

(2) 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 apply in future only in relation to England.

Do consultees agree? **Yes**

Consultation question 16-10.
We provisionally propose 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 apply in future only in relation to England.
Do consultees agree? **Yes**

Consultation question 16-11.
We provisionally propose 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 apply in future only in relation to England.
Do consultees agree? **Yes**

Consultation question 16-12.
We provisionally propose the amendment of Part 3 of and Schedule 5 to the Agriculture Act 1967 (rural development boards) and related legislation so that they apply in future only in relation to England and Scotland.
Do consultees agree? **Yes**

Chapter 17: High Court challenges

Consultation question 17-1.
We provisionally propose that the provisions currently in 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 Code 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:

- 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

- 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.

Do consultees agree? **Yes**

Consultation question 17-2.
We provisionally consider that the provisions of 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.
Do consultees agree? **Yes**

Chapter 18: Miscellaneous and supplementary provisions

Consultation question 18-1.
We provisionally propose that the Bill should:

(1) rationalise as far as possible the bodies or categories of bodies that are to be treated as statutory undertakers for the purpose of some or all of the Code (and for which provisions); and

(2) provide for each undertaker or category of undertaker what is to be regarded as "operational land" and who is "the appropriate Minister".

Do consultees agree? **Yes**

Consultation question 18-2.
We provisionally propose that, when the GPDO is next updated, consideration should be given to separating those provisions relating to development by statutory undertakers, the Crown, mineral operators, and other similar bodies, from those relating to development generally.
Do consultees agree? **Yes**

Consultation question 18-3.
We provisionally propose 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 Bill.
Do consultees agree? **Yes**

Consultation question 18-4.
We provisionally propose 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.
Do consultees agree? **Yes**

Consultation question 18-5.
We provisionally propose 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.

Do consultees agree? **Yes**

Consultation question 18-6.
We provisionally consider 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) no longer serve any useful purpose, and should not be restated in the Planning Code.

Do consultees agree? **Yes**

Consultation question 18-7.
We provisionally propose 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).

Do consultees agree? **Yes**

Consultation question 18-8.
We provisionally propose that the provisions of the TCPA 1990 in the form in which they apply as modified by the TCP (Minerals) Regulations 1995 (so as to apply to minerals development) should be included in the Bill itself rather than in secondary legislation.
Do consultees agree? **Yes**

Consultation question 18-9.
We provisionally propose that the Bill should include 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, provided that it also includes a restriction equivalent to section 303(10) of the TCPA 1990, ensuring that the income from the fees so charged does not exceed the cost of performing the relevant function.
Do consultees agree? **Yes**

Consultation question 18-11.
We provisionally propose that the Code should include a power to require that expert evidence at inquiries and other proceedings (including appeals decided on the basis of written representations) to be accompanied by a statement of truth in accordance with the requirements of the Civil Procedure Rules in force for the time being.
Do consultees agree? **Yes**

Consultation question 18-12.
We provisionally propose 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 amplified to make explicit that such an order is only to be made where:

(1) one party to an appeal has behaved unreasonably; and

(2) that unreasonable behaviour has led other parties to incur unnecessary or wasted expense.

Do consultees agree? **Yes**

Consultation question 18-13.
We provisionally propose that the Planning Code should incorporate provisions equivalent to those currently in:

(1) section 276 of the Public Health Act 1936 (the powers 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.

Do consultees agree? **Yes**

Consultation question 18-14.

Are there any terms used in the TCPA 1990 that need to be defined (or defined more clearly), other than those explicitly referred to in other consultation questions? **Definition of "implementation" of a consent – e.g. works carried out requiring consent in their own right.**

Definition of "building" to exclude any structure such as a lamp post/pole.

Consultation question 18-15.

We provisionally propose 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.

Do consultees agree? **Yes**

Consultation question 18-16.

We provisionally consider that it would be helpful for the Bill to include a provision to the effect that the curtilage of a building is the land closely associated with it, and that the question of whether a structure is within the "curtilage" of a building is to be determined with regard to:

(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.

Do consultees agree? **Yes**

Consultation question 18-17.

We provisionally propose 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 provisionally propose that no further definitions of those terms be provided in relation to purchase notices and blight notices.

Do consultees agree? **Yes**

Consultation question 18-18.

We provisionally propose that the following provisions, which appear to be obsolete or redundant, should not be included in the Planning Code:

(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).

Do consultees agree? **Yes**