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Llywodraeth Cymru  
Welsh Government

# **PLANNING (WALES) BILL**

**Explanatory Memorandum**  
Incorporating the Regulatory Impact  
Assessment and Explanatory Notes

October 2014



# **Planning (Wales) Bill**

## **Explanatory Memorandum to the Planning (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Sustainable Futures of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view, the Planning (Wales) Bill introduced by me on 6 October 2014 would be within the legislative competence of the National Assembly for Wales.

Carl Sargeant AM  
Minister for Natural Resources  
Assembly Member in charge of the Bill

October 2014



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## **List of Abbreviations**

AMS – Annual Monitoring Schedule

CIPFA – The Chartered Institute of Public Finance and Accountancy

CRA - Commons Registration Authorities

DAS – Design and Access Statements

DCLG – Department for Communities and Local Government

DEFRA – Department for the Environment, Food and Rural Affairs

DM – Development Management

DNS – Developments of National Significance

GDP – Gross Domestic Product

GOWA – Government of Wales Act

GPDO – General Permitted Development Order

HRA – Habitats Regulations Assessment

IAG – Independent Advisory Group

IPC - Infrastructure Planning Commission

LDP – Local Development Plan

LPA – Local Planning Authority

NDF – National Development Framework

PAS – Planning Advisory Service

PCPA – Planning and Compulsory Purchase Act

POSW - Planning Officers Society Wales

RTPI – Royal Town Planning Institute

SA/ SEA – Sustainability Appraisal/ Strategic Environmental Assessment

SDP – Strategic Development Plan

TAN – Technical Advice Note

TCPA – Town and Country Planning Act

TVG – Town and Village Greens

WLGA – Welsh Local Government Association

WSP – Wales Spatial Plan

# Part 1 - Explanatory Memorandum

## 1 Description

- 1.1 The Planning (Wales) Bill ('The Bill') is a set of provisions derived from an extensive evidence base and stakeholder engagement that will provide a modern legislative framework for the operation of the planning system. It puts in place delivery structures, processes and procedures, to make the planning system fit for the 21<sup>st</sup> Century. Taken together the provisions will allow the planning system to support the delivery of national, local and community aspirations by creating sustainable places where citizens have improved access to quality homes, jobs and built and natural environments and supports the use of the Welsh language.
- 1.2 The Bill proposes to introduce changes that:
- Provide a modern delivery framework for the preparation of development plans and planning decisions, including allowing the Welsh Ministers to decide a limited number of planning applications in defined circumstances.
  - Reaffirm Welsh Government commitment to the plan led system. Addressing identified deficiencies at national and strategic levels by replacing the Wales Spatial Plan (WSP) by a National Development Framework (NDF) and introducing provisions which would allow the preparation of Strategic Development Plans (SDPs) where needed.
  - Ensure that Local Development Plans (LDPs) are delivered and reviewed regularly so that they remain relevant to planning decisions.
  - Improve the operation of the development management system so it complements the implementation of Local Development Plans (LDPs), including the introduction of provisions to promote greater consistency and availability of pre application advice.
  - Further enhance engagement by making it easier for citizens to influence the future of their communities, through the introduction of statutory pre application consultation for significant planning applications.
  - Overhaul the arrangements under which planning decisions are made including introducing provisions which would allow for the standardisation of planning committee arrangements and procedures and delegation to officers across Wales.
  - Modernise the planning enforcement system to ensure that breaches of planning control can be remedied efficiently.
  - Streamline the planning appeal process.



## 2 Legislative Background

- 2.1 Section 107 of the Government of Wales Act 2006 (GOWA) provides legislative competence for the National Assembly for Wales (the Assembly) to make laws for Wales known as Acts of the Assembly.
- 2.2 Section 108 of GOWA provides that a provision of an Act of the Assembly is within the Assembly's legislative competence if it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 of that Act and does not fall within any of the exceptions specified in that Part of the Schedule (whether or not under that heading or under any of those headings), and it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales).
- 2.3 The subjects listed under the heading Town and Country Planning in paragraph 18 of Part 1 of Schedule 7, are:

**“Town and country planning,...Spatial planning...Urban development”.**

In addition:

the following subjects are listed under paragraph 12 (Local Government)

“Constitution, structure and areas of local authorities ... Powers and duties of local authorities and their members and officers”;

the following subject is listed under paragraph 6 (Environment);

“Town and village greens”;

and the following subject is listed under paragraph 14 (Public Administration)

“Inquiries in respect of matters in relation to which the Welsh Ministers exercise functions”.

- 2.4 The above subjects provide the Assembly with the competence to make the provisions contained in the Planning (Wales) Bill.
- 2.5 Development consent under the Planning Act 2008 is excepted under the heading to paragraph 18. None of the provisions in the Planning (Wales) Bill falls within that (or any other) exception.

### 3 Purpose and intended effect of the provisions

#### Overview

- 3.1 The planning system manages the development and use of land in the public interest. A well functioning planning system is essential for sustainable development. It must provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs, helping to provide the homes, jobs and infrastructure that we need collectively and individually. The planning system also provides protection and opportunities to enhance our most important built and natural environments and supports the use of the Welsh language.
- 3.2 Government establishes the overall context for the operation of the planning system by providing the legislative and policy framework. Day to day operation of the planning system is vested in local planning authorities who have responsibility for establishing the local policy framework – the LDPs, making decisions on planning applications and taking enforcement action where there are breaches of planning control.
- 3.3 The national framework for the operation of the planning system consists of three integrated and complementary parts:
- Primary legislation
  - Subordinate legislation
  - Policy and guidance.
- 3.4 The main pieces of primary legislation as they relate to planning in Wales are:
- The Town and Country Planning Act 1990
  - The Planning and Compulsory Purchase Act 2004
  - The Planning Act 2008
- 3.5 The provisions contained in the Planning (Wales) Bill seek to amend existing primary legislation, principally the 1990 and 2004 Acts.
- 3.6 The Planning Acts contain high level framework powers. The day to day operation of the planning system is dependent upon an extensive suite of subordinate legislation which describes in detail the procedures used to prepare development plans and the operation of the development management system. The main instruments of subordinate legislation are:
- the Town and Country Planning (LDP) Regulations 2005 (SI 2005 No 2839) (W 203) as amended;
  - the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) (SI 1995 No 418) as amended;
  - the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) (SI 2012 No 801) (W.110) as amended;

- the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order) (SI 1987 No 764) as amended; and
- the Town and Country Planning General Regulations 1992 (SI 1992 No 1492) as amended.

3.7 A number of the provisions contained in the Planning (Wales) Bill depend upon subordinate legislation for implementation. A series of policy intent papers and consultation documents are being published alongside the Bill to outline detailed implementation matters. These include:

- Strategic Planning
- Local Development Plans
- Pre-application procedure
- Developments of National Significance (DNS)
- Option to make applications to Welsh Ministers
- Non-Validation
- Decision Notices
- Notification of Development
- Statutory Consultees
- Enforcement
- Appeals
- Town and Village Greens

3.8 The third part of the national framework comprises policy and guidance. This includes the WSP, Planning Policy Wales, Minerals Planning Policy Wales and Technical Advice Notes. Together they set out the land use planning policies of the Welsh Government. They cover such matters as the economy, housing, Welsh language and town centres. They are updated regularly according to need. Planning Policy is outside the scope of the Bill.

3.9 An extensive evidence base has been assembled to identify areas where the planning system should be reformed. Key reports include the National Assembly for Wales' Sustainability Committee Inquiry into Planning in Wales and the report produced by an Independent Advisory Group Towards a Welsh Planning Act: Ensuring the Planning System Delivers. The evidence base proposes a series of possible changes to the planning system covering primary legislation, subordinate legislation, policy and guidance and culture change. The proposals that the Welsh Government identified to bring forward were included in the draft Planning (Wales) Bill and the consultation paper Positive Planning: Proposals to Reform the Planning System in Wales, published in December 2013. The consultation has been published alongside the Bill and Explanatory Memorandum.

## **Aim**

3.10 The aim of the Bill is to deliver a planning system which is positive in outlook and enables development, helping to deliver sustainable places that include homes, jobs and infrastructure, whilst providing opportunities to protect and enhance our most important built and natural environments and support the use of the Welsh language.

- 3.11 To help to achieve this aim the Planning (Wales) Bill:
- Redefines, in light of devolution, the respective roles and responsibilities of organisations involved in delivering planning services;
  - Makes improvements to the development plan, development management and enforcement systems to improve performance and realise the full potential of planning to help to deliver national, local and community aspirations.
- 3.12 The Explanatory Memorandum reflects the 3 main aspects of the planning system: development planning, development management and enforcement. The specific elements of the Bill include:

### **Development Planning**

- National Development Framework (NDF) for Wales
- Strategic Planning
- Period for which Local Development Plan (LDP) has effect
- Withdrawal of Local Development Plan (LDP)
- Welsh Ministers' power to direct preparation of Joint Local Development Plans (LDPs)
- Joint Planning Boards

### **Development Management**

- Pre-Application Procedure
  - Requirement to carry out pre-application consultation
  - Requirement to provide pre-application service
- Applications to Welsh Ministers
  - Developments of National Significance (DNS)
  - Option to make application to Welsh Ministers
- Design and Access Statements
- Decision Notices and Notification of Development
- Statutory Consultees
- Planning Committees and delegation
- Enforcement
- Appeals
- Town and Village Greens

### **Development Planning**

#### **Overview**

- 3.13 Plan making is the most important activity undertaken within the planning system. At present there are two statutory land use plans prepared in Wales: the WSP, produced by Welsh Ministers, and LDPs, prepared and adopted by local planning authorities. The WSP was published in 2004 and updated in 2008. Currently (October 2014) there are 14 adopted LDPs and a further 9

adopted Unitary Development Plans (the forerunner to LDPs) in place. Two local planning authorities, Cardiff and Anglesey, do not have up to date plans.

- 3.14 Plans are essential for the effective operation of the planning system. They provide the mechanism for communities, their elected representatives, developers and other interested organisations and individuals to decide, based on available evidence, how places should change in the future. Plans provide the basis for rational and consistent decisions on planning applications and appeals.
- 3.15 The evidence base for the Bill has identified three areas where development planning should be improved. Firstly, re focussing the WSP into a NDF; secondly, addressing cross boundary strategic planning issues by introducing a new tier of SDPs; and, thirdly ensuring that LDPs are prepared and kept up to date.

## **National Development Framework**

### **Background**

- 3.16 Wales was one of the first countries in the UK to prepare a national spatial plan. Section 60 of the Planning and Compulsory Purchase Act 2004 currently requires the Welsh Government to prepare and keep under review a national land use plan – the WSP. The WSP sets out the Welsh Ministers' policies in relation to the development and use of land in Wales.

### **Current position**

- 3.17 The evidence base for the Bill confirms significant continuing support for the production of a national plan which identifies and reconciles the development and land use aspects of national policies and strategies and sets priorities for lower tier development plans. There is a clear consensus that despite good initial intentions, the WSP has had limited influence on the planning system. The National Assembly Environment and Sustainable Development Committee's Inquiry into Planning Policy, after taking evidence from a wide cross section of stakeholders, concluded that the Welsh Government should review the role and function of the WSP focusing specifically on how it relates to the development plan framework and its relevance to the determination of planning applications and appeals. The Independent Advisory Group, following a call for evidence, also concluded that the WSP did not provide a sufficient steer, at an appropriate scale, to directly influence LDPs. Apart from identifying some broad locations for development, the scale, context and land use implications were not clearly set out making it difficult to reconcile national and strategic priorities.

## **Purpose of the provisions**

- 3.18 The Bill provides a statutory requirement for the Welsh Ministers to prepare and keep up to date a national land use plan to be known as the NDF. Existing legislation relating to the preparation of the WSP will be revoked. The NDF will fulfil the following principal roles:
- set out the Welsh Government's land use priorities by identifying key locations to accommodate change and infrastructure investment;
  - provide a national land use framework for Strategic and Local Development Plans (LDPs);
  - co-ordinate and maximise the potential benefits arising from investment, and
  - provide the development plan context for the Welsh Ministers to make decisions on Developments of National Significance (DNS).
- 3.19 The NDF will concentrate on development and land use issues of national significance which the planning system is able to influence and deliver. It will reflect national policies and strategies where there are development or land use implications, and clearly articulate what is expected from other parts of the development plan system. Nationally significant areas of growth and change will be identified providing the certainty necessary for the private sector to make major investment decisions. There will be direct opportunities for business to put forward nationally significant projects which they would like to bring forward and finance.
- 3.20 The NDF will be prepared by the Welsh Ministers in accordance with a specified timetable. The framework will be evidence based with clear justification for any policies or proposals, accompanied by a Sustainability Appraisal (SA) including a Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA).
- 3.21 Stakeholders and the general public will be engaged during a statutory 12 week consultation period. Following the public consultation the Welsh Ministers will publish the draft NDF (revised) and lay it before the Assembly with a report outlining how the representations made in response to the consultation have been taken into account. The Assembly will be given a period of 60 days to consider the framework. The NDF cannot be finalised or published until expiry of that 60 day period. The Welsh Ministers must take account of any report, resolution or representations made by the Assembly or any of its committees in deciding whether or not the draft NDF should be amended. The published NDF must be accompanied by a statement as to any changes made to the draft NDF following scrutiny by the Assembly.
- 3.22 The NDF will be kept under review and within five years of publication the Welsh Ministers must either undertake a revision, or publish an explanation of why they have decided not to revise it. The NDF can be revised in whole or in part and it may be revoked in all or part at any time. Any revised NDF will also be subject to scrutiny by the Assembly.

- 3.23 The legislation will require SDPs (where prepared) and LDPs to be in conformity with the NDF. The NDF will set out area or location specific policies currently in 'Planning Policy Wales' (PPW) and Technical Advice Notes (TANs). The NDF will provide the starting point for Welsh Ministers to make planning decisions on DNS.

### **Intended effect of the provisions**

- 3.24 The intended effect of the legislation is to put in place a national framework that identifies and integrates the development and land use consequences of national policies and strategies. This will increase the effectiveness of national policies and strategies and provide direction and certainty for the preparation of SDPs (where produced) and LDPs. This will improve the efficiency of the planning system, making it easier to prepare local planning authority plans and reduce competition between areas by identifying areas for growth.
- 3.25 For business there will be increased certainty, reducing risk and allowing investment to be made. There will also be an opportunity for business to propose the nationally significant projects which they would like to bring forward and finance for possible inclusion within the NDF.

## **Strategic Planning**

### **Background**

- 3.26 Increased personal and business mobility mean that choices about where to live and invest no longer respect local planning authority boundaries. This creates challenges when preparing LDPs, particularly where housing markets and travel to work areas cross a number of local planning authority areas.

### **Current position**

- 3.27 At present there is no statutory vehicle for the resolution of cross boundary issues that have implications beyond individual LDPs. Where strategic issues are present they may be addressed through the preparation of a joint LDP, or by reflecting the implications in individual LDPs – One of the tests of soundness requires that LDPs have regard to other relevant plans, policies and strategies relating to the area, or adjoining areas.
- 3.28 Evidence obtained from preparation of the first round of LDPs has demonstrated that in some areas there are a significant number of strategic planning issues that have been difficult for a single local planning authority to address in isolation when preparing their plan. A number of reports have advocated the introduction of strategic plan making between the WSP and LDPs to address this deficiency. The Assembly's Environment and Sustainability Committee Inquiry into Planning in Wales (January 2011) identified a need to strengthening regional and collaborative working arrangements and to enhance the weight that may be given to the products and outputs of regional and collaborative work. Work undertaken on 'Planning

for Sustainable Economic Renewal' 2011 identified a requirement for a strategic plan above LDPs; and the City Regions and The Independent Advisory Group reports concluded that a formalised structure for strategic planning is required.

### **Purpose of the provisions**

- 3.29 The intended provisions provide a legal framework for the preparation of SDPs where they would improve the operation of the planning system. This will allow larger than local issues such as housing demand, search areas for strategic employment sites and supporting transport infrastructure, which cut across a number of local planning authorities, to be considered and planned for in an integrated and comprehensive way. Where SDPs are prepared, the complexity and repetition currently contained in individual LDPs will be reduced resulting in faster preparation and lower costs.
- 3.30 Three areas have been provisionally identified as benefitting from strategic plan focussed on Cardiff, Swansea and the A55 corridor. To allow for future flexibility, the legislation does not specify where SDPs should be prepared. The Welsh Ministers will direct a responsible local planning authority to work with neighbouring authorities and other interested organisations to propose a detailed boundary based on robust evidence and consult on their proposals. The boundary will be submitted to the Welsh Ministers for approval. Welsh Ministers will specify by subsequent regulations where an SDP should be prepared, setting out the reasons why the area has been identified.
- 3.31 For each area a Panel will be established to prepare and keep under review the SDP. It will have sole responsibility for approval and adoption of the plan and some minor incidental duties. It will not have any other significant planning role. The Panel will comprise locally elected members from the LPAs within the area and one third representation from social, economic and environment organisations. LPA representation will reflect the population within each constituent authority. The precise number of members on the Panel will be for the Welsh Ministers to determine following designation of the boundary. Funding and resource arrangements to support operational activities will be for the Panel to determine. Each authority within the SDP area must contribute towards the operational cost. The Panel will require professional and technical support to prepare an SDP and facilitate a scrutiny process. Experts from the constituent LPAs may be seconded and/or employed to undertake preparation of the plan under the auspices of the Panel.
- 3.32 The Welsh Government will be a statutory consultee in the SDP process. SDPs will have to be in conformity with the NDF and LDPs will have to be in conformity with the relevant SDP. This means they will have to be compatible with, and meet the requirements specified in, the NDF. The NDF, SDP and LDP will form the development plan for any area.



- 3.33 The plan will be subject to a public examination, led by an independently appointed Planning Inspector, from the Planning Inspectorate Wales. All interested parties who object to the plan within the specified consultation period will have a right to appear at the formal hearings. The decision on whether the SDP can be approved will be for the Inspector to determine. The Panel must approve the SDP in accordance with the Inspector's binding recommendations.
- 3.34 Each SDP should have appropriate monitoring indicators that demonstrate how the policies of the plan are being delivered. It will be for the SDP Panel to determine an appropriate monitoring system. All SDPs should be accompanied by an Annual Monitoring Schedule (AMS) submitted to Welsh Ministers at the end of each October. This will cover the preceding financial year; commencing after the first full financial year following adoption of the plan. Actions identified in the AMS may require a partial or complete review of the SDP. It will be for the SDP Panel to determine what action is appropriate.

### **Intended effect**

- 3.35 The effect of the provisions will be to ensure that cross boundary planning matters are properly addressed, with a formal SDP replacing any voluntary approach. It will be a more efficient approach, avoiding repetition and ensuring consistency of delivery at the local level. Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters, particularly site specific allocations, in accordance with the scale and location of growth set out in the SDP. Issues such as the overall level of housing, employment and retail provision will have already been addressed and do not need to be repeated. This should result in a much slimmer LDP in scope and content. Where significant cross boundary strategic issues are absent, there is no need for an SDP the LDP and NDF will provide the statutory planning framework for the area.

## **Local Development Plans**

### **Background**

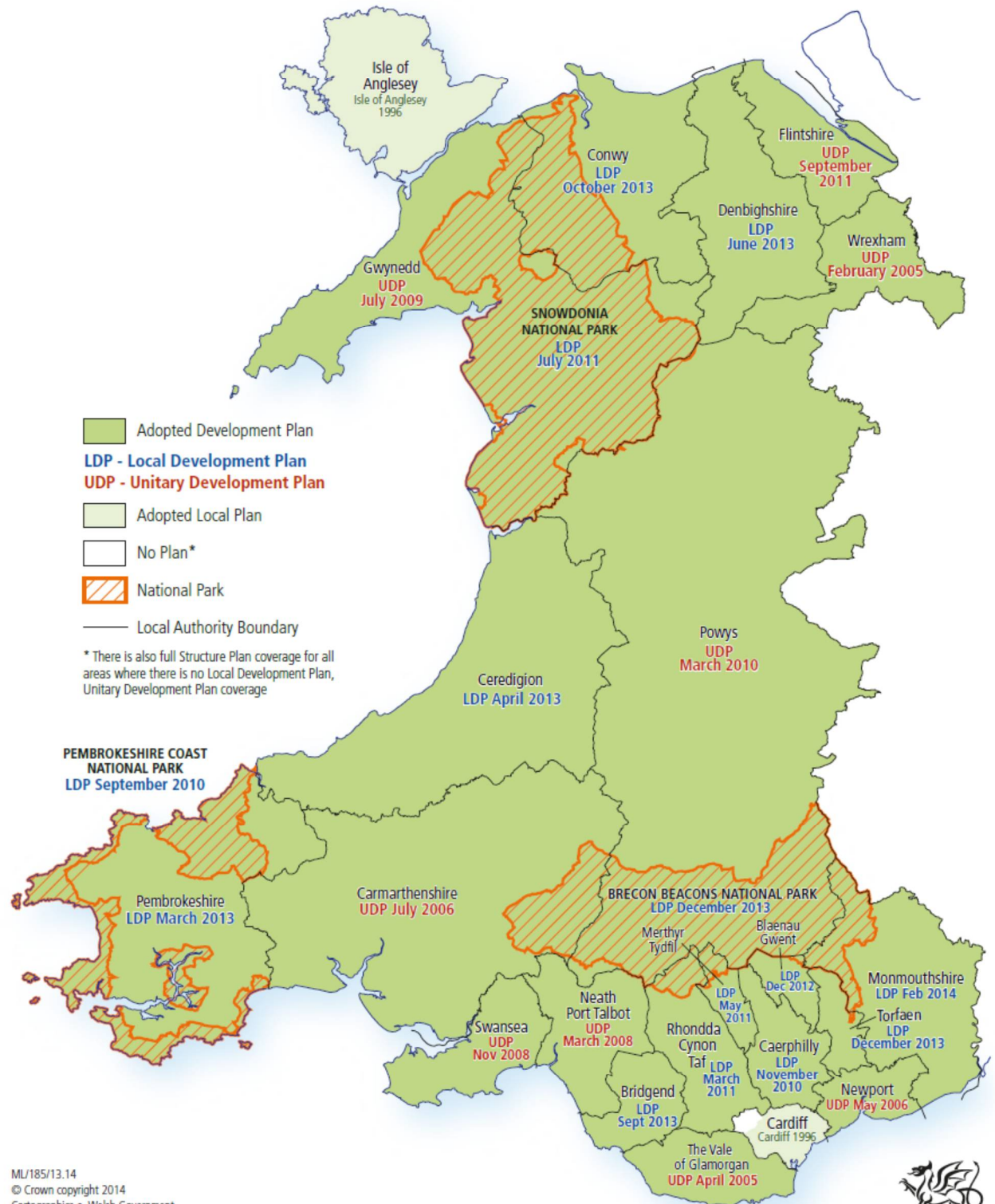
- 3.36 Local planning authorities have a statutory duty to prepare and keep under review a LDP. The legislative requirements are contained in sections 62 – 78 of the Planning and Compulsory Purchase Act 2004. LDPs provide the mechanism for communities, their elected representatives, developers and other interested organisations and individuals to decide, based on available evidence, how places should change in the future. Plans provide the basis for rational and consistent decisions on planning applications and appeals.

### **Current position**

- 3.37 Progress on LDP adoption has been much slower than originally anticipated. Currently (October 2014) there are 14 adopted LDPs and a further 8 Unitary Development Plans (the forerunner to LDPs) in place.

# Development Plan Coverage

Position as at March 2014



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- 3.38 The Independent Advisory Group (IAG) identified that the chief criticism of the LDP system is delay and failure to adhere to the timetables in Delivery Agreements. The most serious delays have occurred when LPAs have withdrawn their LDPs after submitting them for examination, having been informed by the Inspector that the plan is flawed. Other examinations have been delayed to allow further evidence to be obtained on matters such as housing supply.
- 3.39 The responses to the IAG call for evidence highlighted the consequences of delays to LDP preparation, including lack of certainty and an unwillingness to invest. The LDP system is seen by many organisations as a key to delivery, identifying the land needed to meet society's need for, amongst other things, houses and jobs and supporting sustainable development objectives. There was no suggestion that the LDP system should be abandoned or radically overhauled.
- 3.40 The Welsh Government has worked with stakeholders to review LDP subordinate legislation and guidance. This review has focussed on the key technical aspects of the Town and Country Planning (Local Development Plan)(Wales) Regulations 2005 and the associated guidance contained in Local Development Plans Wales (2005) and the LDP Manual (2006). The outcome of the review will be consulted on during Autumn 2014 and is anticipated to be introduced in 2015.

### **Purpose of the provisions**

- 3.41 The intended provisions will improve the LDP process and help to ensure that, where LDPs have been produced, they are kept up to date and relevant for making decisions on planning applications and appeals.

### **Notification of LDP withdrawal**

- 3.42 The IAG identified that the most severe delays in LDP preparation have occurred where the plan has been withdrawn by the authority. At present LPAs can decide to withdraw their LDP at any time before they submit the plan to the Welsh Ministers. In some cases plans have been withdrawn for non planning reasons, removing both the plan and the evidence that supports it from the public arena. This means that the Welsh Ministers would not be able to progress the LDP to adoption if it were considered appropriate to do so.
- 3.43 To ensure that LDPs which are potentially capable of adoption are not withdrawn for non-planning reasons, LPAs will be required to notify the Welsh Ministers of any resolution to withdraw their LDP. The Welsh Ministers would then decide whether to direct that the LDP must be submitted to them for approval (section 65 of the Planning and Compulsory Purchase Act 2004), or call-in the LDP for examination (section 71 of that Act). The Welsh Ministers would be able to request further information from a local planning authority to inform their decision. If the Welsh Ministers do not exercise these powers within the 6 week period then the LDP can be withdrawn.

## **Joint Local Development Plans**

- 3.44 Evidence from the IAG report and the experience of the LDP examination process has demonstrated that collaboration between neighbouring authorities needs to be improved. Where there are strong functional links between areas a joint LDP should be prepared, allowing a strategic overview to be taken on issues such as housing supply. Efficiency savings can also be realised through sharing of skills and resources and commissioning technical studies. There are existing powers under section 72 of the Planning and Compulsory Purchase Act 2004 which allows two or more LPAs to voluntarily prepare a Joint LDP.
- 3.45 The Welsh Ministers may direct two or more LPAs to produce a Joint LDP. This decision would be based on evidence of the issues that need to be addressed. Where a direction is issued, the constituent LPAs must immediately cease work on the sole LDP and move as quickly as possible to produce a Joint LDP, building on work that has been undertaken to date. Joint LDPs cannot be produced through the revision of an individual LDP. The governance of a Joint LDP will remain with the constituent authorities. An advisory committee would be formed to support the development of the joint plan and would be made up of elected members from the constituent authorities.
- 3.46 Existing legislation allows the Welsh Ministers to merge local planning services, other than those provided by a National Park Authority. Currently this legislation does not extend to the preparation of an LDP for the combined area. The Intended provisions will enable Welsh Ministers to allow a joint planning board to perform all local planning authority functions including preparation of an LDP.

## **Period for which the Development Plan has effect**

- 3.47 Development plans should cover a 10 to 15 year period from adoption, setting out a strategy and policy framework to accommodate change. The further the plan moves away from the base date the weaker the connection to the evidence base and the less responsive it is to circumstances, reducing relevance for planning decisions and appeals. It is essential that development plans are reviewed quickly kept up-to-date and remain responsive to issues.
- 3.48 The provisions will require development plans (the NDF, SDPs and LDPs) to have a specific duration beyond which they cease to be a development plan. Expired development plans will no longer be the first point of reference when making decisions on planning applications, but the evidence upon which the plan was based may continue to be a material planning consideration, depending upon its robustness. To ensure there is clarity that a plan remains the extant development plan, the development plan must clearly state the date of adoption and the plan period.

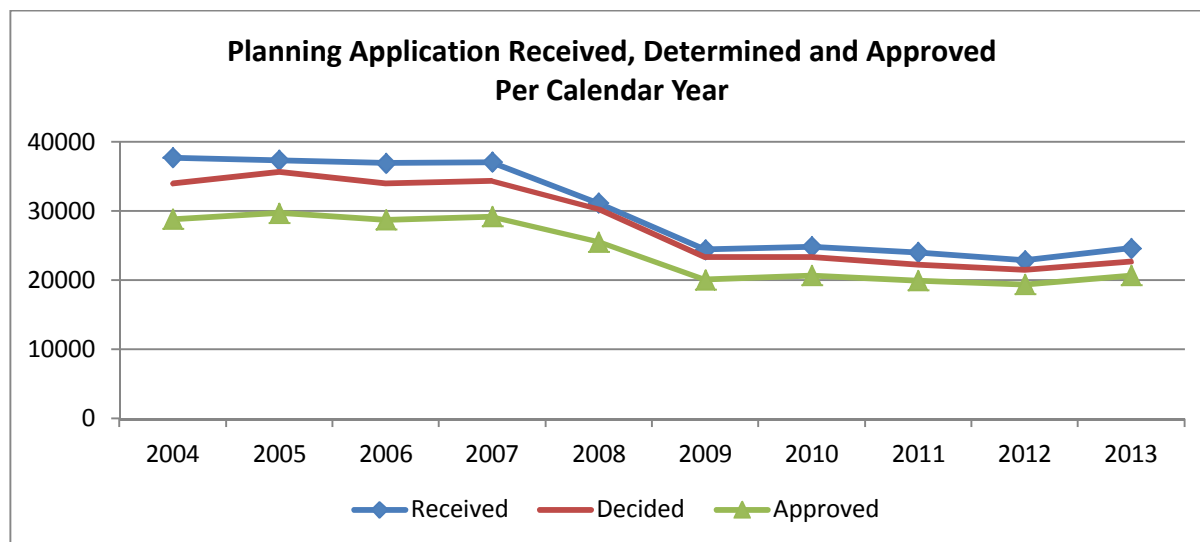
## Intended effect

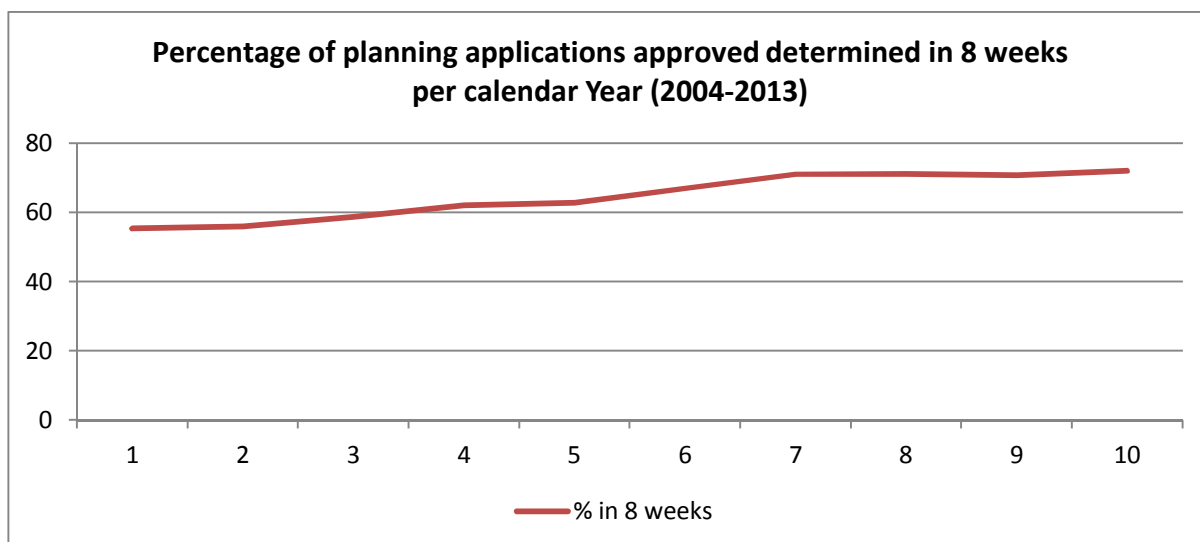
3.49 The combined effect of the provisions is to ensure that development plans are prepared as quickly as possible for appropriate areas. This could include the need to prepare an LDP covering a whole housing market area, allowing the most suitable sites to be identified. The provisions will also help to ensure that plans are kept up to date – setting out a clear vision on how areas will change in the future and provide a firm basis for rational and consistent decisions on planning applications and appeals. Up to date development plans will provide certainty for communities and businesses allowing investment to take place.

## Development Management

### Overview

3.50 The planning application process is the primary tool used to manage new development. It plays a critical role in the consideration and authorisation (or refusal) of proposals and is the aspect of the planning system with which most individuals and businesses are familiar. Each year around 22,000 planning applications are decided in Wales with the vast majority 90 % being approved. In terms of timeliness of decision making, 70 % of planning applications are decided within 8 weeks. Further detail is provided in the graphs below:





- 3.51 The evidence from the Planning Application Review and IAG report has shown that the legislative framework which supports the development management system is essentially sound but the system as a whole is under strain. Additional requirements, for example implementation of European legislation, have made the planning application process slow, complex and legally focused which is sometimes difficult for non professionals to follow or understand.
- 3.52 Central to improving the planning application process is a change in practice from **development control** to **development management**, moving away from a regulatory culture that can hinder development to a service delivery approach that enables. Development management is a positive and proactive approach to shaping, considering, determining and delivering development led by the local planning authority, working collaboratively with those proposing developments, the community and other stakeholders. It is undertaken in the spirit of partnership and inclusiveness, and supports the delivery of key priorities and outcomes and requires collaboration from project inception to completion of construction and beyond. The Welsh Government has taken forward a change programme to help embed development management, implementing the findings of several studies including the Planning Application Review and IAG report. The legislative provisions included in the Bill build on this approach by providing the legislative foundations for change.
- 3.53 The following legislative provisions are proposed:
- Pre application procedure
  - Applications to Welsh Ministers
  - Planning Committees and delegation
  - Decision Notices and Notification of Development
  - Statutory Consultees
  - Design and Access Statements
  - Town and Village Greens
  - Appeals
  - Enforcement

## **Pre Application Procedure**

### **Overview**

- 3.54 It is best practice for developers to engage with communities, LPAs and other stakeholders, including statutory consultees, prior to the submission of a planning application. This process is often referred to as “frontloading” and occurs most frequently for larger schemes. For the applicant it should smooth the passage of the application by enabling any issues to be flushed out and resolved in advance, thereby improving the chances of obtaining permission. Alternatively, pre-application discussions may identify issues which preclude a proposal proceeding so avoiding abortive work on a planning application. For local planning authorities it should make the task of dealing with the application easier. For statutory consultees and communities it provides an opportunity to influence what is proposed.
- 3.55 There are two elements to the pre-application procedure:
- Pre-application consultation
  - Pre-application services

### **Requirement to carry out pre-application consultation**

#### **Background**

- 3.56 Early discussion and engagement with communities and statutory consultees can help to improve the quality of development proposals and reduce the number of objections following submission of a planning application.

#### **Current position**

- 3.57 Planning Policy Wales identifies that participation is an essential part of the planning process. There is currently no statutory requirement for applicants in Wales to consult the community or statutory consultees on development proposals prior to the submission of a planning application. Some developers, particularly when proposing major schemes, undertake pre-application community consultation voluntarily - this may take the form of workshops, meetings, leafleting and information panels etc. A written summary of this consultation, describing how the proposal has been amended following consultation, is then usually included with the application as supporting information.
- 3.58 The evidence base for the Bill, including the Planning Application Review and IAG Report, identified that early involvement by communities and statutory consultees prior to submission of a planning application can improve public confidence in the planning system and help to address areas of concern. One of the measures recommended by the IAG was the introduction of a statutory duty that requires developers to undertake pre-application community consultation - involving communities at the initial project planning stage.

## **Purpose of the provisions**

- 3.59 The purpose of the provisions is to introduce a statutory requirement for pre-application engagement with specified persons, likely to include the public and statutory consultees in the planning application process, where a development is of a description specified in a development order under subordinate legislation. This is likely to include DNS and major developments. The applicants will be required to publicise the proposal and carry out consultation. Procedural arrangements will be set out by development order, which may specify how consultation is to be carried out and how specified persons are to respond, including timescales. A development order may also make provision to require certain consultees (likely to be existing statutory consultees in the planning application process) to also report to the Welsh Ministers on their compliance with these requirements.
- 3.60 The provisions also require that a “pre-application consultation report” accompanies all submitted applications where the applicant has been required to carry out pre-application consultation. The form of the report and the particulars that must be contained in it will be set out by development order.

## **Intended effect**

- 3.61 The intended effect of the provisions is to provide a statutory basis for early, meaningful and effective engagement to ensure that communities and statutory consultees can more readily influence development proposals.

## **Requirement to provide pre-application services**

### **Background**

- 3.62 Pre-application discussions allow a prospective developer and local planning authority to discuss a project before a planning application is submitted. For a developer it allows them to obtain information on any local policy and information requirements. For the local planning authority it should ensure that the submitted application includes all the relevant information and is capable of being determined in a timely way.

### **Current position**

- 3.63 Planning Policy Wales encourages LPAs and applicants to discuss proposals before a planning application is formally submitted. The evidence that supports the Bill identified the importance of pre-application advice in improving the speed of decision making and quality of development proposals. Practice guidance on pre-application advice has been published<sup>1</sup>.
- 3.64 Pre-application advice involves planning officers offering an opinion about how the proposed development complies with legislation and planning policy. It allows the LPA to set out early in the development process the information

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<sup>1</sup> [Practice Guide: realising the potential of pre-application discussions \(May 2012\)](#)



that should accompany the planning application and provides an opportunity to identify local issues that could influence the design of the development or help to address community concerns. Such discussions mean that problems are foreseen early and at a time when solutions are more readily found. Currently, pre-application discussions are a discretionary service that is offered by most LPAs. The form and quality of the service among authorities is variable, with, for example, record keeping sometimes being inadequate. Some LPAs use Section 93 of the Local Government Act 2003 (which provides local authorities with the ability to recoup the cost of discretionary services) to charge for pre-application advice.

### **Purpose of the provisions**

- 3.65 The purpose of the provisions is to allow for a consistent approach to pre-application services across local planning authorities and to allow the Welsh Ministers to provide such a service for applications made directly to them. The Welsh Ministers will be able to make regulations in relation to pre-application services to be provided by them and LPAs. The regulations will specify the circumstances in which pre-application services are to be provided, the nature of the services and publication by the Welsh Ministers or LPA of any advice provided. Regulations will also relate to the keeping of records of pre-application services and the publication by the provider of a statement setting out the range of available pre-application services.

### **Intended effect**

- 3.66 The intended effect of the provisions is to provide a consistent approach to pre-application services across Wales and allow the Welsh Ministers to provide such a service for applications made directly to them. This will be of benefit to applicants, local planning authorities and the Welsh Ministers. Formalised arrangements for pre-application services will help to identify potential improvements to development proposals at an early stage, contributing to a more efficient planning application procedure and better quality development.

### **Applications to the Welsh Ministers**

#### **Overview**

- 3.67 LPAs have responsibility for their areas, and should make decisions about planning applications wherever possible. Exceptionally, the Welsh Ministers use powers under section 77 of the Town and Country Planning Act 1990 (TCPA 1990) to call in a planning application for decision by them. In 2013 four applications were called in by the Welsh Ministers.
- 3.68 The evidence base for the Bill supports the continuation of the approach whereby LPAs deal with the overwhelming majority of planning applications subject to two limited exceptions. The IAG concluded that the Welsh Ministers should take planning decisions appropriate for national Government and that this should include nationally significant infrastructure applications

that fall within the Welsh planning system. They also considered that Government needs powers of intervention to ensure that LPAs deliver development management services in an effective and timely manner. The Bill makes provision for limited exceptions to allow the Welsh Ministers to receive and determine planning applications in the following areas:

- Developments of National Significance (DNS)
- Option to make a planning application direct to the Welsh Ministers.

## **Developments of National Significance**

### **Background**

- 3.69 There are currently no provisions enabling planning applications to be submitted to the Welsh Ministers for determination in the first instance. The Planning Act 2008 introduced a new consenting regime for Nationally Significant Infrastructure Projects. This empowers the UK Government to give consent for certain types of infrastructure projects. The regime is more limited in scope in Wales than in England with local planning authorities continuing to grant permissions for certain infrastructure projects, which in England are consented by the Secretary of State.

### **Current position**

- 3.70 Evidence underpinning the Bill identified that sometimes LPAs find it difficult to make timely decisions on applications which may be complex or of a contentious nature. This situation can arise where the LPA lacks the specialist skills necessary to reach a decision or where there are widespread national benefits arising from the application but significant local impacts. The evidence from the Assembly's Environment and Sustainability Committee: Inquiry into Energy Policy and Planning in Wales (CR – LD9526) and the report "Evaluation of Consenting Performance of Renewable Energy Schemes in Wales" (January 2013) identified concerns about the ability of the current planning system to support the delivery of renewable energy developments within an acceptable time scale, recognising that these types of projects comprise some of the most challenging and high profile aspects of the planning system. For example the 2013 report identified that the time taken to determine a planning application for a windfarm is on average 122 weeks.

### **Purpose of the provisions**

- 3.71 The purpose of the provisions is to enable the Welsh Ministers to determine applications for planning permission to undertake development which is nationally significant. (Projects consented by the UK Government under the Planning Act 2008 by way of Development Consent Order are outside the scope of these proposals.) The Bill makes provision for a new category of development to be known as Development of National Significance. The types of applications to be handled under this process are those which are of greatest significance to Wales in terms of their potential impacts. They may

include projects identified by the NDF and those that meet thresholds and criteria to be set out in secondary legislation. Evidence from the Quantification of infrastructure and business/ commercial planning applications submitted in Wales study has identified that if the same thresholds and criteria are adopted in Wales as in England, with the exception of energy generation projects where it is proposed that projects in the range 25-50 MW will be categorised as DNS, it is predicted that no more than 10 projects a year would be submitted to the Welsh Ministers.

- 3.72 The Welsh Ministers or an appointed person on their behalf will be responsible for processing and deciding planning applications for this category of development. These proposals will be subject to pre-application notification and consultation. LPAs will be required to prepare and submit to the Welsh Ministers a local impact report setting out the impacts from the development and any mitigation requirements. The Planning Inspectorate will process the application using the written representations procedure, holding a hearing where necessary, and provide a report to the Welsh Ministers. The Welsh Ministers will make the decision on the application. Post-determination procedures, including discharge of planning conditions, will be handled by LPAs.

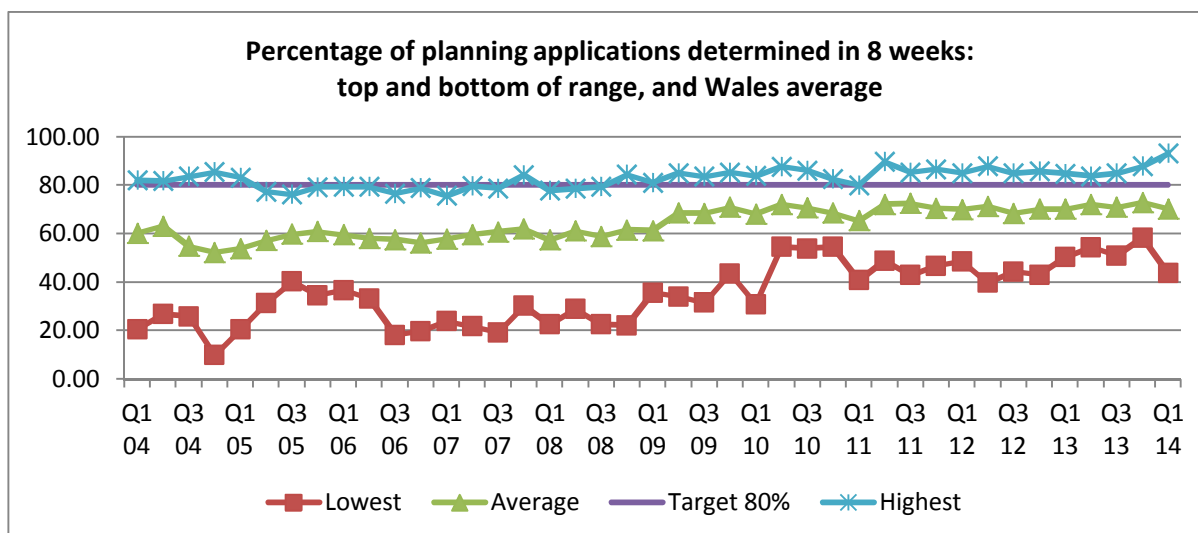
### **Intended effect**

- 3.73 The intended effect of the provisions is to put in place an approach which would allow the Welsh Ministers to decide a limited number of devolved planning applications for the largest and most technically challenging developments. This will ensure that national priorities and local concerns can be fully explored during the consideration of the planning application.

### **Option to make a planning application direct to the Welsh Ministers**

#### **Background**

- 3.74 LPAs are responsible for deciding most planning applications. Across Wales over 90% of planning applications are granted consent and many LPAs determine over 80% of applications within an 8 week period. However, there is significant variation in performance among authorities with the poorest performers managing to determine between 40% and 50% of applications within 8 weeks demonstrating significant opportunity for improvement.



### Current position

- 3.75 Current planning legislation empowers LPAs to determine planning applications in their area except where the Welsh Ministers exercise their powers of call-in or the development is subject to permitted development rights.
- 3.76 The IAG Report identified wide variation in local planning authority performance both in relation to plan preparation and the speed of deciding planning applications. They recommended that the performance of LPAs should be measured consistently and that a system of incentives and penalties should be established linked to performance. The report “A New Approach to Managing Development in Wales” (Sept 2012) provides a specific focus on suggested improvements to the development management system. The Report recommended a range of ‘carrots and sticks’ that could be used to incentivise and penalise poorly performing LPAs, including removal of the ability / power of an LPA to determine a planning application.

### Purpose of the provisions

- 3.77 The planning system does not currently allow for a planning application to be submitted directly to the Welsh Ministers if an LPA is performing poorly. Poor performance has serious consequences including acting as a barrier to economic growth, increasing costs and reducing certainty for both developers and the local community.
- 3.78 The provisions provide the Welsh Ministers with a power to designate an LPA as underperforming and to revoke such designation at any time based on defined criteria. The Welsh Ministers will be able to prescribe the development to which the option to make a direct application applies, and provide applicants for planning permission with a right to apply directly to the Welsh Ministers. The Welsh Ministers will have a power to prescribe the determination process for applications made directly to them.

## **Intended effect**

- 3.79 The intended effect of the provisions is to give applicants the option to make a direct planning application to the Welsh Ministers, if an LPA is deemed to be poorly performing and has been designated by Welsh Ministers for that purpose. These measures should ensure LPAs focus on improving their performance, encouraging efficient working in respect of their development management and other planning functions.

## **Planning committees and delegation**

### **Background**

- 3.80 Section 70 of the Town and Country Planning Act 1990 provides LPAs with the power to determine an application for planning permission. Section 101 of the Local Government Act 1972 allows the local authority to arrange for the discharge of its functions, including the power to determine an application for planning permission, by a committee, sub-committee or by delegation to an officer of the authority (normally the Head of Service / Chief Planning Officer in the case of planning decisions). The criteria setting out the rules governing when a delegated decision may be made are provided within each Council's scheme of delegation. Each local authority is able to define its own planning committee size, make up, procedures and scheme of delegation.

### **Current position**

- 3.81 The evidence base for the Bill has demonstrated wide variation in planning committee arrangements, procedures and delegation practices. The types of procedures associated with Planning Committees includes:
- when and how often committees are held;
  - membership, attendance requirements and numbers on the committee;
  - the advance publication of reports and submissions to committee;
  - the approach to speaking at committee (whether third parties/applicants have the right to speak);
  - training for committee members;
  - requests for committee site visits; and
  - deferral of applications for further consideration, information or site visit.
- 3.82 The size of planning committees also varies significantly, from Newport where 11 councillors comprise the committee, to all 72 councillors in Swansea. The IAG report concluded that smaller planning committees are likely to develop a better culture of informed evidence-based decision making. Evidence from the Royal Town Planning Institute (RTPI) study into the operation of Planning Committees in Wales (2014) indicated that in general the larger committee, the lower the average attendance, which can result in a lack of continuity of membership and consistency in decision-making.

- 3.83 All LPAs have put in place delegation arrangements. Delegation schemes set out the circumstances where a planning application is to be determined by planning committee and circumstances where it can be determined by the chief planning officer or equivalent under delegated powers. These circumstances normally relate to issues such as the type of development, the number of objections received, and who submits the application. Most schemes of delegation allow for a local member to request that an application falling within their ward be determined by the Planning Committee (known as a “call in”). The delegation scheme also normally allows for the Chief Planning Officer to refer any application to committee if he/she believes the proposal warrants committee consideration (e.g. because it is controversial or has an authority wide impact). An analysis of the current delegation schemes in operation reveals that there are significant inconsistencies in the criteria that set out which applications are determined by committee and which are dealt with under delegated powers. These inconsistencies result in uncertainty for applicants and communities, particularly those who operate over several local planning authority areas.
- 3.84 The IAG recommended that provisions be included in the Planning (Wales) Bill to allow the Welsh Ministers to make regulations regarding:
- a national scheme of delegation of decision making powers by local planning authorities, including minimum requirements;
  - the size and make-up of planning committees;
  - the procedures to be used at planning committee meetings including speaking rights for all parties;
  - compulsory training for members of planning committees, including procedures where training requirements have not been met by individuals; and
  - a code of conduct for members of planning committees and officers.
- 3.85 The RTPI study also recommended that the Welsh Government:
- introduce legislation to establish a mandatory national scheme of delegation of decision making powers by LPAs, including minimum requirements;
  - establish a national planning committee protocol that should be incorporated into each authority’s constitution (the protocol would set out procedures to be used at planning committee meetings);
  - introduce legislation to define the size of planning committee; and
  - establish a national programme of member training.

### **Purpose of the provisions**

- 3.86 The purpose of the provisions is to achieve a more consistent and efficient approach to the procedures used to decide planning applications. This will be achieved by the Welsh Ministers having a power to prescribe by regulation the size and make up of planning committees and a power to introduce a national scheme of delegation. Further detail of the proposed approach is contained in the Planning Committee and Delegation consultation paper.

- 3.87 Alongside the legislative provisions, in cooperation with interested parties, including the Welsh Local Government Association (WLGA), a National Planning Committee Protocol will be prepared to set out good practice and increase consistency in how planning committees operate across Wales. A National Programme of Member Training will also be established.

### **Intended effect**

- 3.88 The intended effect of the provisions is to introduce greater consistency and efficiency in the procedures across Wales used to determine planning applications whilst retaining local democratic accountability. This will ensure that similar planning applications are dealt with in the same way wherever applicants are in Wales and will be of particular benefit to those who operate over a number of LPA areas. There will also be potential efficiency savings for LPAs and developers as result of increased delegation rates. As a result of more routine planning applications being delegated, planning committees will have more time to consider larger or more contentious planning applications.

## **Decision Notices and Notification of Development**

### **Decision Notices**

#### **Background**

- 3.89 A decision notice sets out the LPAs decision on a planning application. It is a fixed document that remains unchanged following the date of issue, even though aspects of the planning permission can change prior to and during implementation.

#### **Current position**

- 3.90 At present, the only way of establishing the plans and documents associated with the permission and whether the requirements of a condition have been met is to search through the application file associated with the permission.
- 3.91 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (at Article 24) sets out a number of matters that decision notices must include. Other than the need to include the information set out in Article 24, there are no requirements in relation to the form of a decision notice and therefore, in practice, the form and content varies widely among LPAs.
- 3.92 Some LPAs include as best practice a condition on the planning permission that specifies the approved plans and/or documents, whilst others do not. As a consequence, the ability of developers to make minor material amendments to existing planning permissions also becomes inconsistent. Developers who want to make a small amendment to their planning permission rely in many instances on varying this specific condition by means of an existing application process to vary or remove conditions (made under section 73 of

the TCPA1990). Without such a condition, this flexibility for developers is absent requiring an entirely new application to be submitted.

### **Purpose of the provisions**

- 3.93 The provisions will allow for the decision notice to be updated as necessary to reflect the current position of the planning permission. A development order may prescribe the form, manner and particulars of decision notices.
- 3.94 The decision notice must specify the plans or other documents in accordance with which development must be carried out. Provision is also made for a deemed planning condition which requires all development to be carried out in accordance with any plans or other documents specified in the decision notice. In addition, these provisions will also ensure that developers can make minor material amendments to existing planning permissions. The deemed condition provides a relevant condition which developers can then amend, by means of submitting a section 73 application to the LPA for determination, to make such minor changes.
- 3.95 When a local planning authority approves any details required by a planning condition or limitation then the decision notice must also be updated and re-issued by them to reflect this approval.

### **Intended effect**

- 3.96 The intended effect is to make the decision notice a 'live' document that reflects the current position of the planning permission so that it is easier for developers, LPAs, local residents and other stakeholders to identify the scope of the planning permission and whether conditions have been complied with. It will increase clarity, transparency and certainty within the development management process.
- 3.97 In addition, the provisions ensure that developers can make minor material amendments to existing planning permissions instead of having to submit an entirely new application to make such changes. This will reduce unnecessary delay, uncertainty and expense for developers and LPAs.

### **Notification of Development**

#### **Background**

- 3.98 Currently there is no requirement for developers to notify the intended or actual commencement of development, or display the planning permission on site, when development commences.



## **Current position**

- 3.99 At present there is no legal requirement for developers to notify anybody before planning permission is implemented. Consequently, local residents and other members of the public are only aware of development being commenced when activity starts on the site. Where there are a number of planning applications relating to a site it may be difficult for the LPA and local community to establish what planning permission is being implemented.

## **Purpose of the provisions**

- 3.100 The provisions will require the developer to notify the local planning authority of the date on which development is to begin and the details of the planning permission being implemented. A copy of the planning permission must also be displayed at or near the site. The types of planning permission that these requirements are to apply to will be defined by development order. This is likely to be for planning permissions relating to major development.

## **Intended effect**

- 3.101 The intended effect of the provisions is to support greater clarity, transparency and certainty for all stakeholders, including local communities, in the development management process, in particular where a single development has multiple permissions. The introduction of a notification of commencement will assist in monitoring compliance with permissions by helping to ensure that all necessary conditions have been discharged prior to development commencing, thereby preventing breaches of conditions and reducing the need for enforcement action.

## **Statutory Consultees**

### **Background**

- 3.102 Statutory consultees are organisations and bodies who must be consulted on certain planning applications. They provide specialist, technical advice on development proposals. LPAs may give significant weight to the advice of statutory consultees, particularly when it has limited expertise on a particular technical issue. This can mean authorities are reluctant to determine applications without input from these key bodies or go against their advice.

### **Current position**

- 3.103 The IAG considered the role of statutory consultees in the planning process. The evidence base identified that the general level of performance of statutory consultees does not reflect their important role and influence in the planning system. In particular concern was expressed that statutory consultees cause delay in the process by providing late responses to consultation requests. Responses can also be disproportionate to the complexity of the development proposed or simply unclear. It is felt that they do not engage early enough in the planning application process. Early engagement is seen as important to

draw out any particular technical issue that could cause delay during the determination process.

- 3.104 Those bodies that are currently identified as statutory consultees in the planning application process are also consulted on an informal basis by LPAs on reserved matters applications and details associated with discharging planning conditions, which in some instances have been attached to the planning permission at the request of those bodies / organisations. Again, concern has been expressed that responses received to these consultation requests can be late, disproportionate or unclear, which again cause delay in the process.
- 3.105 To address these issues a package of measures is proposed. The proposals include:
- Commencing Section 54 (Duty to Respond to Consultation) of the Planning and Compulsory Purchase Act 2004. This introduces a requirement that those bodies, which are required to be consulted by the local planning authority or the Welsh Ministers (as the case may be) before the grant of planning permission, approval or consent, must provide a substantive response within a prescribed period and to report to the Welsh Ministers on their compliance with these requirements. These requirements will be prescribed in an order.
  - Introducing new primary legislation contained in the Planning (Wales) Bill as outlined below.

### **Purpose of the provisions**

- 3.106 The purpose of the provisions is to clarify the areas where those bodies that are currently identified as statutory consultees in the planning application process must provide specialist advice when consultation requests have been made. These are:
- by developers at the pre-application stage of the process (see section on pre-application consultation); and
  - by the local planning authority for applications for approval, consent or agreement, which include applications to discharge conditions, reserved matters applications and applications for non-material amendments.
- 3.107 Where these bodies are consulted in the circumstances described above, the provisions also ensure that they provide timely and substantive responses and report to the Welsh Ministers on their compliance with the requirements.
- 3.108 The provisions will require those bodies / organisations that are currently identified as statutory consultees in the planning application process to provide substantive responses to consultation requests that are made within a set period, as prescribed in subordinate legislation.

## **Intended effect**

- 3.109 These changes will assist the determining body to obtain specialist information to inform the determination of certain types of applications. They will also benefit developers by ensuring these bodies / organisations respond promptly to any request for information, helping to reduce delays in the determination process. They should also reduce the uncertainty felt by local communities often associated with lengthy protracted responses. Finally, the changes will benefit statutory consultees themselves by ensuring their considered views are taken into account in the determination of a proposed development.

## **Removal of duties to make provision about design and access statements**

### **Background**

- 3.110 Design and access statements (DAS) are a mandatory requirement for most planning and listed building applications. They are statements that explain the design principles and concepts that have been applied to the development, and how access issues have been dealt with.

### **Current position**

- 3.111 The requirement for DAS are set out in Sections 62 (5) and (6) of the TCPA 1990. Equivalent provisions in relation to listed buildings are contained in section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 3.112 The intention behind DAS was to add value to the planning and design process and allow stakeholders to engage more effectively. In practice the DAS process has been subject to significant criticism. The report into the Planning Application Process (June 2010) raised a number of criticisms of DAS, including the nature of the process and additional costs. The research report, review of design and access statements in Wales (November 2013) concluded there was no evidence that DAS had led to improvements in the design of the developments considered in the case studies and had done very little to broaden designers' perception of inclusive access. The evidence suggests that DAS can vary significantly in terms of their quality, often only meeting the minimum requirements. The general perception of applicants is that the mandatory requirements for DAS have become a box ticking exercise used for validation purposes, having minimal impact on design, quality or inclusive access. The key positive aspect of DAS is their role as a communication tool. The evidence also indicates that DAS have raised the profile of design and inclusive access, and gives consistency as to how they are considered and presented in the planning process.

## **Purpose of the provisions**

3.113 The purpose of the provisions is to remove the specific requirement that a development order makes provision for a DAS to be submitted as part of planning and listed building consent applications. They do this by repealing Section 62 (5) and (6) of the TCPA 1990 and equivalent provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990.

3.114 This will not mean that DAS will no longer need to be submitted with an application but instead give greater flexibility for a future review to consider as wide a range of options as possible. The existing general powers in Section 62 of the TCPA 1990 and Sections 10 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 will continue to provide the legislative basis for DAS while consideration of the options takes place.

## **Intended effect**

3.115 The intended effect of the provisions is to remove the specific legal requirement for a development order to provide for DAS to accompany applications for planning or listed building consent.

## **Town and Village Greens**

### **Background**

3.116 Town and village greens (TVG) are areas of land where local people have taken part in lawful sports and pastimes and in doing so established recognised recreational rights.

### **Current position**

3.117 Before 1965 the use of areas of land by local people as town and village greens was established under common law. In 1965 the Commons Registration Act made provision for the registration of historic greens and also enabled 'new' TVGs to be registered on the basis of 20 years 'use as of right' (i.e. without permission, force or secrecy). Commons registration authorities have responsibility for maintaining registers of TVGs.

3.118 Applications for TVGs are sometimes controversial as in some cases applications to register land appear to have been made to frustrate development rather than to protect rights.

3.119 The process for determining TVG applications has impacted on the planning system in a number of ways:

- TVG applications may be submitted at any time including after development has begun and so have become a last resort to prevent development which has planning approval;
- Irrespective of the merits of applications registration authorities are required to determine them;

- There is no mechanism for discouraging vexatious or speculative applications; and
- Applications stand outside the planning system and must be determined against separate legal criteria contained in section 15 of the Commons Act 2006.

3.120 Where an application to register a TVG been successful, the land becomes permanently protected, and cannot be developed unless complicated compulsory purchase proceedings are initiated. In the case of unsuccessful applications, development will not normally be undertaken on that land from the time a registration application is made until it is decided, as the developer will not want to risk halting any development in the event of a successful TVG application. The timescale for deciding TVG applications is indeterminate.

### **Purpose of the provisions**

3.121 The purpose of the provisions is to clarify the process for handling planning applications and TVG applications, to avoid parallel processes which are confusing for all parties, including local residents. This will be achieved by amending the TVG legislation. The existing strong protection for registered TVG remains unchanged.

3.122 The provisions prohibit applications being made to register land as a TVG where the land has entered the planning system (i.e. been identified for development in a development plan at the preferred strategy stage and beyond, or is the subject of an application for planning permission or a development consent order, where a draft Local Development Order has been published, or where an application under the Transport and Works Act for an order has been made).

- To encourage landowners to permit recreational use of their land landowners will be able to submit declarations to the commons registration authority, rendering land immune from registration, provided that certain criteria are met. Without this there is the potential for landowners to decide that they have no option but to prevent access to land.
- To assist registration there is also provision to allow common registration authorities to set an administrative fee for considering registration or declaration of a TVG; this fee should enable local authorities to deliver a better registration service. Reducing the period in which a TVG application can be made, after the requisite 20 years of recreational use 'as of right' has ceased, from 2 years to 1 year should also secure more timely decisions on registration.

### **Intended effect**

3.123 The intended effect of the provisions is to ensure that planning and TVG legislation is consistent and compatible and is not used to frustrate legitimate objectives. This will be achieved by ensuring that TVG applications cannot be made where land has entered the planning system. Protection for existing

TVG will be maintained. Open space designations in adopted LDPs will continue to be protected.

## **Enforcement**

### **Background**

3.124 The aim of the enforcement system is not to punish an individual, but to resolve the harm caused by an unauthorised development. An LPA will first attempt to resolve a breach informally by providing a time period within which to resolve the harm, or to submit a planning application to regularise the development. If the LPA decides it is not expedient to pursue a matter, the land owner has an opportunity to regularise the development by applying for retrospective planning permission. If the LPA decide not to pursue a breach, or the system is slow to respond (given the various avenues for delay that can be exploited by someone determined to frustrate the system), then this can give the impression that the system is unfair, that the land-owner/developer has 'got away with it' and obtained a free planning permission.

### **Current position**

3.125 The current legislative basis for the enforcement system is found in Part 7 of the TCPA 1990. Where it is LPA considers that there has been a breach of planning control, an enforcement notice may be served (section.172 of TCPA 1990). If an enforcement notice has been served the developer may exercise a number of options:

- comply or not comply with the notice;
- exercise the right to appeal (section174 of TCPA 1990);
- submit a planning application (section73A of TCPA 1990: retrospective planning applications) before the period for compliance with the Notice ends to regularise the unauthorised development.

3.126 If refused permission a retrospective planning application can be appealed.

3.127 The evidence from the enforcement review<sup>2</sup> concluded that whilst the system is fundamentally sound, it can struggle to secure prompt, meaningful action against breaches of planning control. It also identified that it can be confusing for communities, particularly as informed offenders can intentionally delay enforcement action by exploiting loopholes in the existing process. It is not uncommon for a case to go on for a number of years requiring significant public resources. The prosecution and appeal process can be particular sources of frustration, as can the multiple avenues by which the acceptability of an unauthorised development can be considered. The evidence also highlighted a need for training amongst magistrates, planning committee members and officers, as well as increased sharing of best practice.

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<sup>2</sup> [Research into the Review of the Planning Enforcement System in Wales \(May 2013\)](#)

3.128 The Welsh Government has identified a programme of improvements to the enforcement system. The proposals include:

- Commencing provisions contained in the Planning and Compulsory Purchase Act 2004, to introduce temporary stop notices guidance.
- Providing LPAs with the power to require the submission of retrospective planning applications where unauthorised development can be regularised and controlled by planning conditions.
- Providing a power to decline to determine retrospective planning applications for development that is subject to an enforcement notice.
- Removing the ability to appeal ground (a) where a refusal of planning permission has already been upheld at appeal.
- Removing the ability to appeal against the refusal of retrospective planning permission where a ground (a) appeal has failed.
- Transferring responsibility for determining section 215 appeals (unsightly) land notices from the Magistrates to the Welsh Ministers.
- Preparing comprehensive guidance on the enforcement system.
- Introducing provisions in the Planning (Wales) Bill.

### **Purpose of the provisions**

3.129 The provisions will reduce the opportunities to delay effective enforcement action by preventing developers from repeatedly submitting either applications or appeals where they have already failed to obtain planning permission. This will help to improve public confidence in the planning system by providing effective and timely resolution of breaches of planning control. The separate provisions are outlined in turn.

#### *Power to require the submission of retrospective planning application*

3.130 Where a breach of planning control has occurred, the power to require submission of a retrospective planning application may be a more satisfactory means of regularising development, instead of requiring its removal/cessation through an enforcement notice. This would provide a quicker resolution of breaches, benefiting all parties and reducing delays by enabling development to be made acceptable by the imposition of appropriate conditions. Developers would not have to make unnecessary appeals and local residents and other parties would be able to have their comments considered when the application is determined.

3.131 Where someone fails to comply with the requirement to submit a planning application, an enforcement notice may be served. If someone attempts to submit a planning application after the service of an enforcement notice, the LPA can exercise their discretion not to accept it.

#### *Power to decline to determine retrospective planning applications for development that is subject to an enforcement notice.*

3.132 If an enforcement notice has been served in relation to an unauthorised development the LPA has made a judgement that it is unacceptable. A

retrospective planning application can therefore cause unnecessary delay, unless the harm can be rectified through the imposition of conditions or through proposing changes to the development. The intended provisions will allow LPAs to decline to determine such applications. This will reduce opportunities to delay enforcement action, leading to more timely resolution of breaches of planning control.

*Remove the ability to appeal ground (a) where a refusal of planning permission has already been upheld at appeal.*

3.133 Section 174(2) of the TCPA 1990, sets out 7 different grounds under which an enforcement appeal may be lodged. Ground (a) - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed) may, if upheld, result in deemed planning consent being granted, provided the appropriate planning application fee has been paid with the enforcement appeal.

3.134 The purpose of the provision is to remove an enforcement appeal under ground (a) where a refusal of planning permission has already been upheld at appeal by the Welsh Ministers. Removing this option will make the enforcement process quicker and less frustrating to those affected by the unauthorised development, by reducing the opportunities to delay enforcement action, leading to more timely resolution of breaches of planning control.

*Remove the ability to appeal against the refusal of retrospective planning permission where a ground (a) appeal has failed.*

3.135 Where an LPA serves an enforcement notice, the landowner / occupier can either appeal under ground (a) or submit a retrospective planning application. Working alongside the provision described above regarding retrospective applications, this provision ensures that an enforcement appeal made under ground (a) provides the only route for the landowner / occupier to secure planning permission once an enforcement notice has been served. As the only route, this provision will reduce the opportunities to delay enforcement action, leading to more timely resolution of breaches of planning control and increased confidence in the enforcement system overall.

*Transfer responsibility for determining section 215 appeals (against unsightly land notices) from the Magistrates to Welsh Government.*

3.136 Currently appeals against notices served under section 215 TCPA 1990 are made to a Magistrates' Court. Evidence suggests that it would be more appropriate for the Welsh Ministers, to consider these appeals. It is not proposed to change the grounds of appeal under section 217 TCPA 1990 or the time limit within which to make the appeal, as they are consistent with other enforcement based appeals which are considered by the Welsh Ministers. The Planning Inspectorate would consider the appeal on the Welsh Ministers' behalf and provide a report with a recommendation. The Welsh



Ministers would make the decision. Any offence committed will continue to be dealt with by the Magistrates.

### **Intended effect**

- 3.137 The intended effect of the provisions is to reduce the number of opportunities to frustrate effective and timely enforcement action. This will help to provide greater fairness, ensuring that developments that require planning permission have appropriate planning consent. Where they do not, an effective enforcement system will ensure removal of the development or cessation of the unauthorised activity.

### **Planning Appeals**

#### **Background**

- 3.138 Planning legislation allows applicants to appeal to the Welsh Ministers against the decision of an LPA. The planning appeal system is administered on the behalf of the Welsh Ministers by the Planning Inspectorate Wales using a dedicated team of inspectors and administrators. A very small number of appeals are recovered for decision by the Welsh Ministers.

#### **Current position**

- 3.139 The current legislative basis for the planning appeal system is provided by Sections 78 and 79 of the TCPA 1990. Equivalent functions to those contained in sections 78 and 79 are in Sections 20 to 22 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 21 of the Planning (Hazardous Substances) Act 1990. There are 3 appeal procedures that can be followed: written representations, informal hearing and public inquiry. The procedure chosen should reflect the complexity of the case. Public inquiries and informal hearings take longer than the written representations procedure and are more resource intensive for all parties.
- 3.140 In 2012-13, 662 planning appeals were received by the Inspectorate. This represents less than 3% of planning applications decided during that year. The majority of planning appeals proceeded by way of written representations (80%), with only 4% following the formal inquiry process. The Welsh Ministers set timeliness targets for determination of appeals. In 2012-13 the Inspectorate either met or exceeded those targets.
- 3.141 The evidence base for the Bill has demonstrated that the current appeal process is generally working well and the role of the Planning Inspectorate Wales is respected. A number of areas for improvement have been identified which are designed to:
- Increase the speed of the appeal process to promote efficiency and provide greater certainty;
  - Increase transparency through better communication and exchange of information among all parties to promote participation and public confidence in the appeal process;

- Ensuring good behaviour among all parties; and
  - Increasing fairness for all involved.
- 3.142 The Welsh Government has identified a programme of improvements to the appeal system, adopting a comprehensive package of measures detailed in Positive Planning – Proposals to reform the planning system in Wales. The proposals include commencing or applying existing provisions contained in the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008, new primary legislation contained in the Planning (Wales) Bill, changes to secondary legislation and new policy and guidance.
- 3.143 The proposals include:
- Using existing powers to amend primary legislation to:
- Remove the right of appellants to appear before an appointed person;
  - Enable the Welsh Ministers or an appointed person to determine the method by which an appeal is to be conducted;
  - Allow applications to be referred back to the LPA in the case of appeals against non determination.
- 3.144 New or amended secondary legislation including:
- A requirement for a full appeal statement to be submitted with the appeal and setting out the information requirements for that statement;
  - Updated appeal regulations, including provision for an expedited Householder and Commercial appeals services;
  - New or amended guidance covering the appeals process and award of costs.
- 3.145 In addition, the Planning (Wales) Bill makes provision for further changes to the appeals process to:
- Introduce a new appeal process where the validity of a planning application is disputed;
  - Prevent the variation or amendment of a planning application after an appeal has been made;
  - Only allow new matters to be raised during an appeal in exceptional circumstance;
  - Consolidate the costs regime and to allow the recovery of costs incurred by the Welsh Ministers or appointed persons and for costs to be recovered in the case of appeals proceeding by written representations; and
  - Allow for procedure rules to be written by the Welsh Minister.

### **Purpose of the provisions**

- 3.146 The purpose of the provisions is to support wider reforms designed to improve the planning appeal process. The proposed provisions adopt a balanced approach and will have benefits for applicants, communities, local planning authorities and the Welsh Ministers by providing greater certainty in the appeal process, increasing transparency, reducing timescales for determination and increasing efficiency.

## Validation appeals

- 3.147 The standard application form, 1APP, provides consistency in the information needed to accompany a planning application. It places the responsibility on applicants to gather all information LPAs need to make robust, informed decisions. LPAs must take a proportionate approach when applying the requirements of the standard application form and any local information requirements when deciding if a planning application should be accepted (often referred to by LPAs as being valid).
- 3.148 Disputes may occur over how much information is appropriate, although currently for the developer the only viable option may be to provide the information requested. To resolve disputes quickly, a new appeal mechanism that deals solely with whether a submitted application is valid or not is proposed. This would allow a right of appeal against the decision of an LPA not to register a planning application, using a streamlined appeal procedure administered by the Planning Inspectorate. The case would be dealt with by an appointed planning officer, rather than an inspector, using the written representations procedure.

*Prevention of the variation or amendment of a planning application after an appeal has been made and new matters only to be raised during an appeal in exceptional circumstances*

- 3.149 Currently when an appeal is considered, the Inspector has the discretion to accept changes to the application and the submission of new information, subject to the rules of natural justice and the requirement that those who are entitled to comment have the opportunity to do so. It can be quicker for developers to appeal against a decision and amend the application at this stage, rather than continue negotiations with an LPA to attempt to agree an amended development proposal. LPAs frequently oppose (at appeal) changes to the original application on the ground that this alters the basis of their decision. In addition communities may be confused and feel excluded from the appeal process when such changes occur, because the opportunity for making timely representations is reduced. New information is sometimes produced at the appeal. Other parties including local communities have little time to consider such information, even assuming they are aware of it. The transparency, fairness and accessibility of the appeal system suffer in such circumstances.
- 3.150 Two provisions are proposed to address the identified concerns. First, no alterations will be allowed to an application once an appeal has been submitted. Second, an appeal must be determined on the basis of the matters before the LPA when it made its decision, except where new information could not have been raised earlier or was not raised because of exceptional circumstances. Both changes would make the planning process more transparent and accessible to the public and increase confidence in it.

*Consolidate the costs regime and to allow the recovery of costs incurred by the Welsh Ministers or appointed persons in cases where appeals proceed by written representations*

- 3.151 In Wales, costs can only be claimed by a party to a planning appeal where a hearing or inquiry is held, not where the written representations procedure is used. The consequence of this is that some appellants may decide to have their appeal examined through an oral method, rather than written representations, which would be more proportionate to the nature of the appeal. Allied with our proposals for the Inspector to determine the method for an appeal, a provision is proposed to allow costs to be awarded where appeals proceed by written representations. The change would make the planning appeals system more consistent and fair to all parties by ensuring that an appellant's ability to seek a costs award is not limited by the Inspectorate's choice of procedure.
- 3.152 Separately the Welsh Ministers, through the Planning Inspectorate Wales, incur significant costs when examining an appeal. A full award of costs implies that the appeal should not have taken place. It is therefore logical that the wasted and unnecessary cost to the public purse should also be recovered. A partial award of costs similarly implies that the public purse has incurred unnecessary expense. This potential additional cost would be a strong disincentive to appellants submitting spurious appeals and encourage LPAs to make decisions based on sound planning grounds. Our proposal is to give the Welsh Ministers the ability to recover their own costs in cases where a party or parties behave unreasonably. This change will instil discipline in the planning appeals process and deter frivolous appeals from occurring and unreasonable behaviour.

**Intended effect**

- 3.153 The intended effect of the provisions, in combination with the wider appeals reforms, is to make the process more transparent and accessible to the public. This should increase public confidence in the appeal system. The efficiency of the appeal system will be increased and costs reduced. It also provides a recourse for applicants where the local planning authority persists in refusing to validate a planning application.

## 4 Consultation

- 4.1 Following the decision in 2011 to reform the planning system in Wales a comprehensive evidence base has been assembled to inform the provisions described in Chapter 3 of this document. The evidence base sought information, opinions and ideas on areas of planning in need of improvement from a wide representation of stakeholder interests and the general public. This process informed the draft Planning (Wales) Bill and consultation paper Positive Planning - Proposals to reform the planning system in Wales which were subject to public consultation between December 2013 and February 2014. The results of this consultation exercise and Environment and Sustainability Committee consideration of the draft Bill have informed the provisions for introduction.

### Evidence base

- 4.2 The evidence base for the bill includes:
- [Independent Advisory Group Report – Towards a Welsh Planning Act: Ensuring the Planning system delivers](#)
  - [A New Approach to Managing Development in Wales: Towards a Welsh Planning Act](#)
  - [Public Attitudes Towards the Planning System in Wales](#)
  - [Delivery of Planning Services in Statutory Designated Landscapes in Wales](#)
  - [Evaluation of Consenting Performance of Renewable Energy Schemes](#)
  - [Research into the operation of Planning Committees in Wales](#)
  - [Research into the Review of the Planning Enforcement System in Wales](#)
  - [Research to Evaluate the Planning Permission Process for Housing](#)
  - [Review of Design and Access Statements in Wales](#)
- 4.3 In the course of preparing the evidence base extensive opportunities for stakeholder consultation have been provided which are described fully in the methodology section of each report. A wide variety of methods have been used to obtain evidence from stakeholders and the general public including calls for evidence, questionnaires, stakeholder events and workshops. This has allowed a broad range of views to inform the proposals contained in the Bill and built widespread consensus on the areas in need of change.
- 4.4 The evidence reports are available on the Welsh Government web site at the following address:
- <http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?lang=en>
- 4.5 The Assembly has also carried out a number of inquiries into various aspects of the Welsh planning system which have been reviewed during preparation of the Bill. During the course of the inquiries the National Assembly Committee has taken evidence from a wide range of planning and other stakeholders. The principal inquiries and associated reports are:

- National Assembly for Wales Inquiry into Planning in Wales
- National Assembly for Wales Inquiry into Energy Policy and Planning in Wales

4.6 The Assembly Reports are available on the Assembly's web site at the following addresses:

<http://www.assemblywales.org/bus-home/bus-third-assembly/3-committees/3-scrutiny/3-sc/bus-committees-third-sc-report.htm>  
<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=2255>

### **Independent Advisory Group Report – Towards a Welsh Planning Act: Ensuring the Planning system delivers**

4.7 As a major part of the evidence base for a new Planning Act, an Independent Advisory Group (IAG) was invited by the Welsh Government, to:

- Consider key objectives for planning in Wales;
- Assess current institutional delivery arrangements; and
- Propose options for the future delivery of plans and decisions.

4.8 Under the chairmanship of a former Director of the Planning Inspectorate Wales a membership was selected from a balanced cross section of representative social, economic and environmental interests with experience of working in all aspects of the planning system.

4.9 The group sought views between November 2011 to February 2012 through a structured call for evidence process. They received 110 responses from a balanced and wide cross section of interested parties and individuals, which included professional bodies, local planning authorities, business and the voluntary sector (including environmental and Welsh language voluntary sector organisations). The IAG met a number of interested groups during and after this time to seek more information and held 6 round table discussion and debates with over 100 stakeholders plus experts on some of the key questions, including the purpose of the planning system, strategic/regional planning and third party rights of appeal.

4.10 The IAG published their report in June 2012. Overall the Group concluded that the planning system remained conceptually sound but identified areas where operation of the system could be improved. The Group unanimously agreed the 97 recommendations to improve all aspects of the planning system. Around one third of the recommendations require primary legislation to take forward.

4.11 The IAG Report and papers are available on the Welsh Government website at the following address:

<http://wales.gov.uk/topics/planning/planningresearch/planningreview/?lang=en>

## **Public Attitudes Towards the Planning System in Wales**

- 4.12 Research was commissioned to gather and report on the views of citizens across Wales on the planning system<sup>3</sup>. The study included 3 components: a face to face survey with a representative sample of Welsh citizens (aged 16 or over); telephone interviews with recent householder planning applicants in Wales; and three deliberative workshops with a cross-section of the general public.
- 4.13 The face to face survey provided robust quantitative data on awareness, perceptions and understanding of the planning system amongst Welsh citizens based upon a representative sample, consisting of 1,000 adults aged 16+ resident in Wales. Interviewing took place in March 2012 and was spread across 68 separate locations throughout Wales all interviews were conducted in respondents' homes. The large sample size allowed for sub-group analysis by variables such as region, rurality, gender, age, and socio-economic group.
- 4.14 A second survey was conducted specifically with members of the general public directly involved in submitting householder planning applications in Wales. This survey took place in April – May 2012 and investigated users' experiences of the planning system and gauged satisfaction levels. The sample was derived from randomly selecting public weekly lists of planning applications. From this sample as many applicants as possible were interviewed, resulting in a total of 201 successful interviews. All respondents were offered the opportunity to participate in either Welsh or English.
- 4.15 The final component of the project comprised three workshops conducted in Cardiff, Haverfordwest and Caernarfon. Sixty four participants attended in total across the three locations. The workshops lasted approximately three hours and took place April 2012.
- 4.16 The final report is available on the Welsh Government web site at the following address:

<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?lang=en>

### **Draft Planning (Wales) Bill and Positive Planning – Proposals to reform the planning system in Wales.**

- 4.17 In December 2013, the Welsh Government issued a draft Planning (Wales) Bill and associated paper Positive Planning – Proposals to reform the planning system in Wales for consultation. The consultation period lasted for 12 weeks between 4 December 2013 and 26 February 2014 and sought views on the draft Bill and a wider programme of changes to the planning system contained in Positive Planning including changes to primary and secondary legislation, planning policy and other tools.

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<sup>3</sup> [Public attitudes towards the planning system in Wales \(September 2012\)](#)

- 4.18 The consultation paper and associated questions sought the views of stakeholders on a range of proposals relating to:
- Culture Change
  - Active Stewardship (including the role of the Welsh Government)
  - Improving Collaboration (including strategic/regional planning)
  - Improving Local Delivery (including Local Development Plans and the Development Management Service)
- 4.19 In support of the consultation, a number of opportunities were provided for stakeholders to discuss the proposal with Ministers and Planning Division officials. Ministerial events were held in Llandudno and Cardiff which attracted 122 delegates. The Cardiff event was Chaired by the then Chair of the National Assembly Environment and Sustainability Committee, Lord Ellis Thomas. Separate dedicated events were provided in association with the Young Planners Network Cymru which provided an opportunity for over 50 young planners to contribute to the discussion.
- 4.20 The Royal Town Planning Institute also organised consultation events in Llandudno and Swansea for built environment professionals. The events attracted 170 delegates and provided an opportunity to discuss the contents of the draft Planning (Wales) Bill and Positive Planning proposals with Planning Division officials. A number of commercial events focussing on the draft Bill and Positive Planning have also taken place.
- 4.21 The consultation generated a total of 405 responses. The majority of the respondents were broadly supportive of the proposals contained in draft Planning (Wales) Bill and Positive Planning.
- 4.22 Of the 405 responses to the consultation, a number were one of two standard responses provided by Friends of the Earth Cymru and Cymdeithas yr Iaith Gymraeg accounting for 19 and 94 responses respectively.



4.23 The responses came from a broad range of respondents:

Respondent Sector Type	Number of Responses from the Sector	Percentage of Responses from the Sector
1. Business/Consultants	59	15%
2. Local Planning Authority	24	6%
3. Government Agency Other Public Sector	54	13%
4. Professional Body/Interest Group	47	12%
5. Voluntary Sector	36	9%
6. Other	185	46%
Total	405	100

4.24 A number of key themes have emerged from the consultation covering the following points:

- Concerns about a potential democratic deficit in relation to the strategic planning proposals and Development of National Significance application procedures;
- Compatibility of the proposals with public service delivery recommendations;
- Clarity of the proposals and costs;
- Relationship to other legislation; and
- Incorporation of aspects of planning policy into legislation.

4.25 A summary of the responses to the draft Planning (Wales) Bill and Positive Planning, together with details of all the responses received is available on the Welsh Government Web site at the following address:

<http://wales.gov.uk/consultations/planning/draft-planning-wales-bill/?lang=en>

<http://wales.gov.uk/consultations/planning/draft-planning-wales-bill/?lang=cy>

### **National Assembly for Wales Environment and Sustainability Committee consideration of draft Planning (Wales) Bill and Positive Planning**

4.26 The Environment and Sustainability Committee of the Assembly decided to consider the draft Planning (Wales) Bill and Positive Planning consultation document.

4.27 The Committee reviewed the evidence base used to inform the proposals, as well as comparing the proposals with the planning systems in other parts of the UK. The Committee took evidence from those who had contributed to preparing the evidence base including the Chair of the Independent Advisory

Group (IAG) and a number of consultants who had produced research reports on aspects of the planning system. The Committee also heard from planning lawyers, representatives from local government officers and the National Parks and from One Voice Wales, Cymdeithas yr Iaith Gymraeg, Planning Aid Wales and Planning Aid England.

- 4.28 The Committee has written to the then Minister for Housing and Regeneration setting out their conclusions. The letter is available on the Assembly web site at the following address:

[Draft Planning \(Wales\) Bill | National Assembly for Wales](#)

## **5 Power to make subordinate legislation**

- 5.1 The Bill contains provisions to make subordinate legislation. The table on the following pages sets out, in relation to each provision in the Bill:
- (i) The person upon whom, or the body upon which, the power is conferred.
  - (ii) The form in which the power is to be exercised.
  - (iii) The appropriateness of the delegated power.
  - (iv) The applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.
- 5.2 The Welsh Government will consult on the content of the subordinate legislation when and where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised and may require pre-act consultation to ensure the legislative proposals in the draft Bill can be implemented quickly.
- 5.3 Where the Bill confers powers for subordinate legislation to prescribe technical matters of detail which may change from time to time, it is considered that the negative procedure is the most appropriate. This reflects the way the planning system operates currently in Wales. Where a power contained in the Bill confers significant powers of decision making on Welsh Ministers, a power to amend or repeal an enactment contained in primary legislation or to impose a financial burden on the public it is considered that the affirmative procedure the most appropriate procedure.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 3(1) Inserts section 60D(1) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to designate a strategic planning area and establish a Strategic Planning Panel for this area and This will require flexibility as the defined area or the make up of the Panel may need changing in the future.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 5 Inserts section 60I(5) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out the provisions about the form, content and the plan period for Strategic Development Plans. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 5 Inserts section 60I(6)(f) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to add matters to an existing list which the Strategic Planning Panel must have regard to when producing a Strategic Development Plan. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 5 Inserts section 60J(2) of the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make regulations in respect of a strategic development plan as they are able to in respect of a Local Development Plan. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 11 Inserts section 66A(6)(b) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out the steps required to be followed in the preparation of a Local Development Plan before it can be withdrawn This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 11 Inserts section 66A(8) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out what the form, content and manner of notices and directions are to be given for notification of withdrawal of Local Development Plans This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 11 Inserts section 66A(9) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set the 'notice period' for Local Development Plan withdrawal. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 12(10) Inserts section 72 (7A) into the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out what a 'corresponding plan' is and specify the circumstances which section 72(5) and (7) of the Planning and Compulsory Purchase Act 2004 are not to apply. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 15 Inserts section 61Z(1)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify descriptions of development which can be subject to pre-application consultation. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 15 Inserts section 61Z(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify persons to be subject to pre-application consultation. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 15 Inserts section 61Z(7)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify cases where the requirement for consultation under 61Z(2) does not apply. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.



Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 15 Inserts section 61Z(8) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to make provision about, or in connection with, consultation required to be carried out at the pre-application stage of a planning application. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 15 – Inserts section 62(10) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this requires Welsh Ministers to require a pre application consultation report to accompany a relevant Welsh application. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 15 Inserts section 62(11) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to make provision about the form and content of the pre-application consultation report. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 16 Inserts section 61Z1(1)-(2) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make provision for and in connection with the provision of pre-application services to a person, by a local planning authority in Wales or the Welsh Ministers, in respect of a qualifying application that the person proposes to make. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 16 – Inserts section 61Z1(4) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out what a qualifying application is, in respect of providing pre-application services to a person. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 16 Insert section 61Z2(1) and (2) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out the form and content of records, statements of services, how records are kept and who the publication is to be made available to. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 16 Inserts section 61Z2(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out incidental, supplementary and consequential provisions with regards to pre-application services. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 17 Inserts section 62D(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set criteria for Development of National Significance.	Affirmative	Confers significant powers of decision making on Welsh Ministers.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 17 Inserts section 62D(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to describe the type of applications to be dealt with as Developments of National Significance. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 17 Inserts section 62E(2) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out notification requirements for Developments of National Significance. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 17 Inserts section 62E(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to make provision about the giving of notice that notification of a proposed Development of National Significance has been accepted.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 18 Inserts section 62G(4) and (5) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make provision to regulate how a secondary consent or an application for a secondary consent is dealt with by them. This may include provision about consultation to be carried out before a secondary consent is granted or refused or provision requiring a person to provide a substantive response to any consultation carried out by virtue of the regulations (including the requirements of a substantive response and the period within which it is to be provided). This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 18 Inserts section 62G(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to provide for an applicable enactment to apply (with or without modifications or not to apply to a secondary consent or an application for such a consent. This is a technical matter	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 18 Inserts section 62H(1) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to prescribe what a secondary consent is in regulations. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 19 Inserts Section 62I(1)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out steps for requiring applicants of Developments of National Significance to submit a Local Impact Report. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 19 Inserts Section 62J(4) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out provisions about the submission of voluntary Local Impact Reports to them for Developments of National Significance. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 19 Inserts section 62K(1)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out provisions about the form and content of Local Impact Reports for Developments of National Significance. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 20 Inserts section 62L(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out the description of development to qualify as an application to be made to Welsh Ministers. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 20 Inserts section 62L(5) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to describe the type of applications to be treated as 'qualifying applications'. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 20 Inserts section 62M (3)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to prescribe the type of application which is to be treated as a connected application in relation to an application made to the Welsh Ministers. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.



Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 20 Inserts section 62M(7) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to make provision for the referral of applications to the local planning authority or hazardous substances authority and for what constitutes the referral of an application so that it is treated as having been made to the authority from the date of that referral (and determined accordingly). . This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 22 Inserts section 62P(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out the determination period for applications made directly to them. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 22 Inserts section 62P(7)(a) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to specify who representative persons are for the purposes of being notified of a determination of an application made to the Welsh Ministers. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 23 Inserts section 62Q(1)-(2) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to regulate the manner in which applications made to them are to be dealt with. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 28 Inserts section 62ZA(4) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables the Welsh Ministers to make provision about the giving of notice that an application does not comply with a validation requirement (including provision about information to be included in the notice and how and when the notice is to be given). This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 28 Inserts section 62ZB(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables the Welsh Ministers to set requirements for giving notice. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 31 Inserts section 71ZA(1) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to make provisions regarding the form of decision notices, the manner in which decision notices are to be given and the particulars to be contained in decision notices. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 31 Inserts section 71ZA(5) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out the persons to whom a revised decision notice must be given. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 31 Inserts section 71ZA(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify details to be contained in a revised version of a decision notice. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 32 Inserts section 71ZB(1)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify details to be contained in a notification of initiation of development. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 32 Inserts section 71ZB(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out the form of a notification of initiation of development and the form of copies for display. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 32 Inserts section 71ZB(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify relevant planning permissions for which notification of initiation of development has to be given. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 35 Inserts section 100A(1) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify the period during which a local planning authority cannot determine an application for approval, in respect of consulting with a statutory consultee. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 35 Inserts section 100A(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify the period during which a statutory consultee must provide a substantive response to a planning application. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 35 Inserts section 100A(4)(a) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to specify the information to be provided by the local planning authority to the statutory consultee in respect of the consultation about an application for approval. This is a technical matter and requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 35 Inserts section 100A(4)(b) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out the requirements of a substantive response that a statutory consultee would be required to provide with a planning application. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 35 Inserts section 100A(4)(c) into the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to set out the form and content of reports that statutory consultees are required to produce. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 37 Inserts section 319ZA(1)-(2) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to require a relevant local planning authority to make arrangements under section 101 of the 1972 Act for a relevant function to be discharged by a committee, subcommittee or officer of the authority. Such regulations will be able to prescribe the terms of the arrangements and any permitted variations in those terms. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.



Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 37 - Inserts section 319ZB(1) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to prescribe requirements in regulations relating to a committee or sub-committee who is to discharge a relevant function. This is a technical matter and may need updating.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 37 – Inserts section 319ZC(3) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make different provision for different local planning authorities and to make special provision where two or more authorities have made arrangements under section 101(1)(b) or (5) of the 1972 Act for the discharge of any of their relevant functions. This is a technical matter and requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 43- Inserts section 217(7) into the Town and Country Planning Act 1990	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make provision in relation to applications made to them under section 217(Appeal against a section 215 notice). This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 44 Inserts section 322C(5) of the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe a standard daily amount for cases involving an inquiry or hearing or cases considered on representations in writing. The costs incurred by the Welsh Ministers are taken to be the prescribed standard daily amount, costs incurred in relation to travel or subsistence in dealing with the case, the costs attributable to the appointment of prescribed persons along with any legal costs or disbursements incurred in connection with the case. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 45 - Inserts section 323A(1)-(5) into the Town and Country Planning Act 1990	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe by regulations the procedure to be followed in connection with an inquiry or hearing held or to be held by or on behalf of them under the TCPA or proceedings on an application, appeal or reference that will be considered on the basis of representations in writing by or on behalf of the Welsh Ministers. This is a technical matter that requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 45 Inserts section 323A(6) into the Town and Country Planning Act 1990.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to set out in what circumstances a matter may not be raised on an appeal unless it has been previously raised before a prescribed time or it is shown that it could not have been raised before that time. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Section 53	Welsh Ministers	Regulations	Suitable for delegated powers as this enables Welsh Ministers to make consequential, incidental, transitional or saving provision as they consider appropriate in connection with the Bill where the statutory instrument amends or repeals an enactment contained in primary legislation. This power is required to provide flexibility to amend technical provisions.	Affirmative	These regulations will amend or repeal an enactment contained in primary legislation.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 54(4)	Welsh Ministers	Order	Suitable for delegated powers as this enables the Welsh Ministers to commence provisions of the Bill.	None	These orders will be confined to commencement and are technical in nature.
Schedule 1, paragraph 1 New paragraph 14(2) of Schedule 2A of the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe the meaning of qualifying expenditure. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Schedule 1, paragraph 1 New paragraph 17(2)(c) of Schedule 2A of the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe adjustments to payments by constituent local planning authorities in regulations. This is a technical matter and requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 1, paragraph 1 New paragraph 26 of Schedule 2A of the Planning and Compulsory Purchase Act 2004.	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to amend provisions about strategic planning panels and may need amending.	Affirmative	These regulations will amend primary legislation.
Schedule 3, paragraph 1 New paragraph 1(2) of Schedule 4D of the Town and Country Planning Act 1990	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe a “specified function”. This is a technical matter and requires flexibility.	Negative	Prescribes technical matters of detail, which may change from time to time.

Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 3, paragraph 1  New paragraph 1(3) of Schedule 4D of the Town and Country Planning Act 1990	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to include consequential or incidental provision in regulations made under paragraph 1 of Schedule 4D to the Town and Country Planning Act 1990. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.
Schedule 4, paragraph 7  Inserts section 75A(1) of the Town and Country Planning Act 1990.	Welsh Ministers	Order	Suitable for delegated powers as this enables Welsh Ministers to provide for certain provisions to apply, with or without modifications, to an application for planning permission made to the Welsh Ministers under Developments of National Significance, applications directly made to Welsh Ministers or connected applications. This is a technical matter.	Negative	Prescribes technical matters of detail, which may change from time to time.



Section or Schedule of Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 4 paragraph 18- Inserts section 303(1B) into the Town and Country Planning Act 1990	Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set provisions for the charging and setting of fees for applications for Developments of National Significance, connected applications or applications direct to Welsh Ministers.	Affirmative	These regulations will impose a financial burden on the public.
Schedule 7, paragraph 6(2) Inserts section 333(4B) into the Town and Country Planning Act 1990	Welsh Ministers	Order	Allows the Welsh Ministers to make a development order which makes different provision for different purposes, for different cases (including different classes of development) and for different areas.	Negative	Prescribes minor technical matters.

## **6 Regulatory Impact Assessment**

- 6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at section 7.
- 6.2 A competition assessment and specific impact assessments are included at section 8.
- 6.3 There are no specific provisions in the Bill which charge expenditure ton the Welsh Consolidation Fund.

## Part 2 – Regulatory Impact Assessment

### 7 Options, costs and benefits

- 7.1 This regulatory impact assessment is structured around each section of the Bill for ease of reference. It presents a series of options for each section followed by costs and benefits.
- 7.2 The costs and benefits associated with each option have been produced using the best available information at the time. This information has been prepared through discussion with key stakeholders, including the Welsh Local Government Association (WLGA) and development industry. The supporting document 'Regulatory Impact Assessment methodology paper' sets out the detail and workings behind figures within chapter 7. This methodology document can be found here:

<http://wales.gov.uk/topics/planning/legislation/planningbill/?lang=en>

- 7.3 The cost of guidance to support these proposals is outlined at the end of each section. Throughout the document figures are annual, across Wales unless specified otherwise and have been rounded up where appropriate to do so. The subordinate legislation from the Planning (Wales) Bill will have their own RIA therefore costs for subordinate legislation have not been covered.

#### *Delays to the development industry*

- 7.4 The benefits and costs relate to the impact of legislation on the development sector as a whole. The current planning system imposes costs on the development sector through inefficient processes. Although the costs incurred are very difficult to measure, estimates have been made for the UK as a whole. The estimates range between £700 million<sup>4</sup> to £3 billion<sup>5</sup> per year

#### *Development Management Guidance*

- 7.5 An estimated cost for the production of a guidance to support the pre-application and Development Management provisions is provided throughout this chapter. The cost of the guidance is estimated to be £50,000 this includes production costs of around £29,000, consultation costs of around £7,000 and publication and dissemination costs of around £14,000. Further details of the costs is provided in the methodological paper, see paragraph 7.2.

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<sup>4</sup> [Planning applications: A faster and more responsive system \(November 2008\)](#)

<sup>5</sup> [Planning reforms boost local power and growth \(4 September 2011\)](#)

7.6 The following chapter is structured into six areas which are:

- Development Planning
- Pre-Application
- Welsh Minister decision making powers
- Development Management
- Appeals and Enforcement
- Town and Village Greens (TVGs)

## **Development Planning**

### **National Development Framework (Part 2, Section 2)**

#### **Options**

- 7.7 Two options have been considered:
- Option 1 – Do nothing i.e. retain statutory provision for Welsh Ministers to prepare the Wales Spatial Plan (WSP).
  - Option 2 - Introduce a statutory framework for Welsh Ministers to produce a National Development Framework (NDF), replacing the Wales Spatial Plan (WSP).

#### **Option 1 – Do Nothing**

##### **Description**

- 7.8 There would be no change to the current legislation under this option. The WSP would remain as the spatial expression of the Welsh Ministers' policies in relation to the development and use of land in Wales. As such, the statutory requirement for LPAs to have regard to the WSP in the preparation of their Local Development Plans (LDPs) would continue.

##### **Cost**

##### Welsh Government

- 7.9 The costs involved in this option would be largely related to the existing legal requirement to review the WSP to ensure that it remains consistent with national policies and priorities. The last review of the WSP was undertaken in 2008 and in terms of staff time was a resource intensive process which also involved regional groups of representatives from the Welsh Government and partner organisations.
- 7.10 A review of the WSP is required every four years, including an update of the Sustainability Appraisal. A future review would not have to repeat the previous approach, and it is envisaged that it would be undertaken in-house by officials using Welsh Government data, combined with a consultation exercise. The staff costs include four members of staff ranging from a senior grade to a planning officer ranging from 10% - 75% of their time. The consultation figure includes running a consultation event and associated costs.

Table 7.1: Summary of (gross) Welsh Government costs for Option 1<sup>6</sup>

	2015-16 (£)	2016-17 (£)	2017-18 (£)	2018-19 (£)	2019-20 (£)
Staff Costs – review	100,238	-	-	-	100,238
Consultation	7,000	-	-	-	7,000
Sustainability Appraisal – review update	20,000	-	-	-	20,000
Staff Costs – annual monitoring	-	30,222	30,222	30,222	-
<b>Total</b>	<b>127,238</b>	<b>30,222</b>	<b>30,222</b>	<b>30,222</b>	<b>127,238</b>

7.11 Total cost for reviewing and monitoring the WSP over 5 years is estimated to be around £345,142.

#### Local Planning Authorities, the community, and statutory consultees

7.12 There are no additional costs to LPAs the community and statutory consultees as they already have the ability to input into the review of the WSP. How and when they input into this process will vary significantly making it difficult to quantify.

### **Benefits**

#### Welsh Government

7.13 There are no additional benefits associated with this option aside from it not requiring any legislative change. However, the effectiveness of the WSP was considered by the Independent Advisory Group (IAG) in their report *Towards a Welsh Planning Act: Ensuring the planning system delivers* (June 2012). The IAG considered that the WSP did not provide a sufficient steer at an appropriate scale to directly influence LDPs, making it difficult to reconcile national and strategic priorities. Similar conclusions were reached by the National Assembly Environment and Sustainable Development Committee's Inquiry into Planning Policy. This option does not address the issues identified by the evidence.

#### Local Planning Authorities, the community and statutory consultees

7.14 This option would retain a system LPAs and stakeholders are familiar with but does not address the identified short comings of the existing process.

<sup>6</sup> Source: Internal Welsh Government information.

## **Option 2 – Introduce a statutory framework for Welsh Ministers to produce a National Development Framework (NDF), replacing the Wales Spatial Plan (WSP).**

### **Description**

- 7.15 This option would result in a concise and focussed national land use plan, building on the WSP experience to create a new NDF for Wales. The NDF would concentrate on those land use issues of national significance which the planning system is able to influence and deliver, setting out how change should be proactively accommodated for the benefit of Wales over a minimum of 20 years. As such, the NDF is not intended to provide comprehensive coverage of all areas of Wales, but instead will focus on the key areas for growth, change and or protection.

### **Cost**

#### Welsh Government

- 7.16 The costs for both the initial preparation and the subsequent review of the NDF would fall to the Welsh Government. The Welsh Government would prepare the framework, based largely on available evidence (e.g. relating to Transport, Water, Energy, etc.). There would then be a process of public consultation, followed by scrutiny by the National Assembly for Wales. The NDF would also be subject to a Sustainability Appraisal (Strategic Environmental Assessment and an assessment in accordance with the Habitats Directive and the Habitats Regulations) which are already required for the WSP. There would be an ongoing process to monitor the NDF, leading to a review every five years. This work is to be undertaken in-house by officials using available data, combined with a consultation exercise which is estimated to cost around £435,015. This cost is spread over the period 2015-16 to 2019-20 (see table 7.2). The staff costs include four members of staff ranging from a senior grade, at approximately 90% of their time, to a planning officer at approximately 70% of their time. The consultation figure includes running a consultation event and associated costs. Monitoring is to be undertaken by the same team of officers with a cost at approximately 20% of their time. The review of the NDF is anticipated to be approximately 40% of the cost of production.

*Table 7.2: Summary of (gross) Welsh Government costs for Option 2<sup>7</sup>*

	<b>2015-16 (£)</b>	<b>2016-17 (£)</b>	<b>2017-18 (£)</b>	<b>2018-19 (£)</b>	<b>2019-20 (£)</b>
Staff Costs – initial preparation	100,238	100,238	-	-	-
Consultation	-	-	7,000	-	7,000
Sustainability Appraisal	-	80,000	-	-	-
Staff Costs – annual monitoring	-	-	30,222	30,222	-
Staff costs – review	-	-	-	-	40,095
Sustainability Appraisal – review update	-	-	-	-	40,000
<b>Total</b>	<b>100,238</b>	<b>180,238</b>	<b>37,222</b>	<b>30,222</b>	<b>87,095</b>

7.17 Total cost for preparing, reviewing and monitoring the NDF over 5 years is estimated to be around £435,015.

#### Local Planning Authorities, the community and statutory consultees

7.18 The NDF proposal would result in a change in the level at which decisions are taken on some nationally significant projects. This would mean that such decisions would be taken at a more appropriate level and that there would be a redistribution of the workload. As such, it is not envisaged that there would be any significant increase in workload for LPAs or statutory consultees as they are already provide comments on the development plan as part of the current process. Similarly, other stakeholders can currently comment on these projects through the LDP process.

7.19 Both Strategic and Local Development Plans would need to be in conformity with the NDF. Therefore, once the NDF is published LPAs would need to ensure that this was the case when reviewing their Local Development Plans.

### **Benefits**

#### Welsh Government

7.20 The NDF would address the perceived weaknesses of the WSP. It would set out the Welsh Government's land use priorities by identifying key indicative locations to accommodate change and infrastructure investment. The NDF

<sup>7</sup> Source: Internal Welsh Government information.



would also provide a national land use framework for the proposed Strategic Development Plans (SDPs) (see section 7.24) and the development plan context for Welsh Ministers to make decisions on the proposed Developments of National Significance (DNS) (see section 7.283).

#### Local planning authorities

- 7.21 This option would benefit LPAs and other stakeholders through the provision of clear Welsh Government priorities for land use development, delivery of sustainable development and setting national priorities. The NDF would not represent an additional layer of work for the planning system as the proposal (along with that for the SDPs) represents a better division of the existing workload, and a change to the level at which some decisions are taken.

#### Development Industry

- 7.22 The NDF would not be solely a public sector plan; it would identify the nationally significant areas of growth and change which will provide the certainty necessary for the private sector to make major investment decisions. The preparation and review of the NDF would provide opportunities to put forward the nationally significant projects which they would like to bring forward and finance in Wales in the 20 year plan period.

#### **Justification for 2 options**

- 7.23 A third option is not proposed regarding this aspect of the Planning (Wales) Bill as it is considered that there is no other reasonable way of achieving the policy intention set out in the Bill.

#### **Summary and Preferred Option**

- 7.24 The evidence demonstrates the benefits of a national development plan for Wales. The NDF would address the perceived weaknesses of the WSP and would set the strategic basis for development planning. Providing a context for the preparation of the proposed SDPs and for LDPs. The NDF would also take forward and integrate existing national area or location specific policies.
- 7.25 Option 1 proposes no change to current arrangements. Welsh Ministers will be required to prepare and review the WSP. The costs associated with the WSP only cover review and monitoring and are therefore less than that of the NDF as set out in option 2 as this includes the production, monitoring and review of the NDF. Option 2 is the preferred option as it addresses both the need for a spatially-based national land use plan and the deficiencies of the WSP. The NDF would focus on issues of national significance, setting the strategic context for development planning and key outcomes to deliver and the spatial implications of national policy priorities.

*Table 7.3: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Welsh Government	£345,142	£89,873	Total cost over 5 Years

7.26 The summary of cumulative costs for the Bill are set out in Annex A

## **Strategic Development Plans (Part 2, Section 3 – 9)**

7.27 Three options have been considered:

- Option 1 – Do nothing i.e. strategic issues are addressed in individual LDPs.
- Option 2 - Introduce a statutory framework for the production of Strategic Development Plans (SDPs) and the establishment of an independent decision making body.
- Option 3 - Introduce a statutory framework for the production of Strategic Development Plans (SDPs) on a collaborative basis.

### **Option 1 – Do Nothing**

#### **Description**

7.28 There would be no change to the current legislation under this option. Strategic issues will continue to be addressed by LPAs in isolation. Strategic issues are currently repeated in each individual planning authority's LDP and assessed individually at independent examinations, thus resulting in duplication of the issues, their scrutiny and potentially poor planning outcomes.

#### **Cost**

7.29 As this option proposes no change there are no additional costs. The current estimated cost to an individual authority for producing a LDP is between £1,400,000 and £2,200,000 over five years (See methodology paper for a detailed estimation of the costs). The range in costs reflects the scale and nature of the issues which can vary among authorities, based on local circumstances.

7.30 An LDP covers many strategic issues such as housing, employment, transport, gypsy and traveller provision, minerals and waste, which would be more appropriately elevated for discussion and conclusion at a wider spatial scale as these issues cross local planning authority's boundaries. Each local planning authority preparing an individual LDP repeats these strategic issues which is an ineffective use of resources with duplication of work increasing costs and delaying plan preparation. It can also result in poor planning outcomes as the best sites may not be identified across the wider region.

#### **Benefits**

7.31 This option would continue with the existing LDP approach and would not address the issue of duplication or realise the potential benefits of effective use of resources and skills.

## **Option 2 – Introduce a statutory framework for the production of Strategic Development Plans (SDPs) and the establishment of an independent decision making body**

### **Description**

- 7.32 This option would result in the delivery of SDPs by an independent decision making body.
- 7.33 The decision making body will consist a panel comprising of two thirds elected members from the LPAs within the geographical area and the remaining one third comprising economic, social and environmental partners. The elected members will be nominated to the Panel by their parent authority with representation reflecting population. All members of the panel will have equal voting rights. The principal difference between this option and option 2 is that the panel will have decision making powers.
- 7.34 The panel will require professional and technical expertise to collect the evidence to support the plan and prepare it. Planning officers will be employed directly by the Strategic Planning Panel or be seconded from LPAs or Welsh Government.
- 7.35 The preparation of the SDP will be subject to public consultation and a public examination, led by an independently appointed Planning Inspector, reflecting the current LDP system.
- 7.36 LDPs will be required to be in conformity with the relevant SDP. Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters, particularly site specific allocations, in accordance with the scale and location of growth set out in the SDP. Strategic issues such as the overall level of housing, employment, retail provision and strategic sites will have already been addressed and do not need to be repeated. This will result in a much slimmer LDP in scope and content, thus having cost savings.
- 7.37 There will be areas of Wales where SDP coverage will not be required, reflecting the large geographic scale of some authorities or the absence of significant cross boundary strategic issues.

### **Costs**

#### **Welsh Government**

- 7.38 An initial payment of £120,000 may be required for each SDP area to cover initial set up costs, including the work to produce the proposal for the SDP area. Staff resources will also be required this is estimated to be an annual cost of £50,000.

## Local Planning Authorities

- 7.39 The costs of introducing SDPs is estimated to be £3,500,000 depending on the size of the area and number of authorities included. These costs include the following:
- Staff costs, (including an on-cost which consists of national insurance and pension contributions, accommodation, IT/stationery/telephone, travel and subsistence, recruitment/ personnel and finance);
  - Governance costs which include the cost of the panel (including members and stakeholders) and their running costs;
  - A proportion of the time spent by specialist staff who input to the development plan system (e.g. GIS, ecologist, landscape architect, highways engineer, legal, leisure, education, social services, press/communications, development management, housing, property/estates and archaeology / heritage);
  - Specific consultation bodies (Welsh Government, Natural Resources Wales and Dwr Cymru Welsh Water);
  - Gathering an evidence base (This takes into account; sustainability appraisal/strategic environmental assessment; habitats regulation assessment; strategic housing market assessment and gypsy and travellers assessment; employment sites and market appraisal; retail assessment; renewable energy assessment; landscape appraisal; recreation and open space assessment; strategic flood consequences assessment; minerals and waste study and transport modelling);
  - Examination costs (taking into account the cost of the Planning Inspector, programme officer, expert evidence and accommodation costs);
  - Printing costs, translation costs and cost of adverts;
  - IT consultation database.

- 7.40 The same areas as set out above were used as the basis for costing the current LDP system and the light touch LDP system, so the costs are directly comparable. These costs need to be balanced against the resulting savings when producing a light touch LDP.

### *Overall savings*

- 7.41 Due to the elevation of strategic issues from the LDP to the SDP, there will be a consequential slimming of the current LDP. Issues such as the strategy, population, strategic housing and employment sites, transport, retail, minerals and waste, are considered to be suitable for elevation to the SDP. It has been estimated that cost savings in gathering the evidence base and cost of examination of about a third, could be made with a light touch LDP. The light touch LDP would allocate housing and employment sites and include development management policies as appropriate.
- 7.42 The introduction of SDPs will therefore lead to slimmer and more succinct LDPs, costing less and reducing preparation timescales. It has been estimated that the production of a light touch LDP could cost between £700,000 (50%) and £1,650,000 (75%) per authority. This would result in an

estimated saving of between £700,000(50%) and £550,000(25%) compared to producing the current 'full' LDP which was estimated to cost between £1,400,000 and £2,200,000.

- 7.43 The overall cost of producing SDPs in South East Wales and light touch LDPs are compared to the current system of LDP production in the table below as an illustrative example.

*Table 7.4*

	<b>Current LDP system</b>	<b>Proposed SDP &amp; light touch LDP system</b>	<b>Comparison of costs</b>
	<b>Cost of producing 'full' LDPs</b>	<b>Combined cost of producing a SDP and 'light touch' LDPs</b>	<b>Overall cost or saving</b>
<b>SE Wales Region (10 authorities)</b>	£14,000,000 to £22,000,000	£10,500,000 to £20,000,000	<b>Saving</b> £3,500,000 to £2,000,000

- 7.44 The table shows that for the South East Wales region, the current system of producing 10 separate LDPs for each local authority costs between £14,000,000 and £22,000,000 over five years. The proposed cost of producing a single SDP and 10 light touch LDPs is estimated to cost £10,500,000 to £20,000,000. Based on these estimates there is potential for savings up to £3,500,000.

- 7.45 Assumptions used by Welsh Government include for example that certain types of evidence (e.g. affordable housing viability) will be prepared for both the SDP and light touch LDP. These costs are set out in detail in the methodology paper.

### Stakeholders

- 7.46 Economic, social and environmental partners will form a third of the panel. It is estimated that the cost of ten members participating on the panel will be £65,000 over a five year period, which will be met by the organisation they are nominated from.

### Development Industry

- 7.47 There would be no additional costs to the development sector involved in the SDP process as this option would result in the redistribution of work between local and strategic matters.

### Statutory Consultees

- 7.48 There would be no additional costs to statutory consultees involved in the SDP process as this option would result in the redistribution of work between local and strategic matters.

## **Benefits**

### Welsh Government

- 7.49 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues.

### Local Planning Authorities

- 7.50 Providing decision making powers to the Strategic Planning Panel, without the need for ratification by the constituent authorities, would enable more timely and efficient decision making. This will avoid potential for delay and frustration of the process and instil responsibility and accountability. The composition of the Strategic Planning Panel, comprising of two thirds locally elected members and one third stakeholders, will help to ensure that all interests are taken into account in the decision making process.

### Development Industry

- 7.51 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues.

### Statutory Consultees

- 7.52 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues.

## **Option 3 – Introduce a statutory framework for the production of Strategic Development Plan (SDP), on a collaborative basis.**

### **Description**

- 7.53 This option would result in the delivery of SDPs by a collaborative governance arrangement. This option involves strengthening the current voluntary approach through providing a statutory framework for LPAs to jointly produce a SDP, which would require agreement by all constituent authorities.
- 7.54 Planning officers will be seconded from the constituent LPAs to undertake the preparation of the plan. A joint committee made up of locally elected members from the geographical area will oversee the production of the SDP. The elected members will be nominated to the committee by their parent authority with representation reflecting population. The decision making power would remain with the LPAs; the joint committee would not have decision making powers. The preparation of the SDP will be subject to public consultation and a public examination, led by an independently appointed Planning Inspector, in the same way as the current LDP system.
- 7.55 Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters. Strategic issues will have already been addressed and do not need to be repeated. This will allow in a much slimmer

LDP in scope and content, thus resulting in cost savings. An example being housing provision; the SDP will set a housing figure for the LDP to meet.

- 7.56 There will be areas of Wales where there is no need for a SDP, as there are no significant cross boundary strategic issues that need to be addressed. The current LDP system can address matters of local importance.

## **Costs**

### Welsh Government

- 7.57 Staff resources will be required, this is estimated to be an annual cost of £51,373.

### Local Planning Authorities

- 7.58 Retaining decision making with the LPAs over a potentially large geographical area will have cost implications. The requirement for the proposals to be considered and decided by each of the individual authorities with an average 57 members is estimated to cost an additional £29,000 per authority. Based on this estimation the additional cost range between £86,000 (for 3 authorities) to £287,000 for (10 authorities). This estimate is based on the time taken for each individual council to consider the SDP proposals.

- 7.59 The estimated costs of introducing SDPs is estimated to be £3,700,000 depending on the size of the area the number of authorities included in preparing a SDP. These costs include the following areas:
- Staff costs, (including an on-cost which consists of national insurance and pension contributions, accommodation, IT/stationery/telephone, travel and subsistence, recruitment/ personnel and finance);
  - Governance costs which include the cost of the committee and their running costs. The involvement of local members from all the constituent authorities;
  - A proportion of the time spent by specialist local authority staff who input to the development plan system (e.g. GIS, ecologist, landscape architect, highways engineer, legal, leisure, education, social services, press/communications. Development management, housing, property/estates and archaeology / heritage);
  - Gathering an evidence base (This takes into account sustainability appraisal/strategic environmental assessment; habitats regulation assessment; strategic housing market assessment and gypsy and travellers assessment; employment sites and market appraisal; retail assessment; renewable energy assessment; landscape appraisal; recreation and open space assessment; strategic flood consequences assessment; minerals and waste study and transport modelling);
  - Examination costs (taking into account the cost of the Planning Inspector, programme officer, expert evidence and accommodation costs);
  - Printing costs, translation costs and cost of adverts;
  - IT consultation database.



The difference in cost from option 2 is set out in the methodology paper.

### *Overall savings*

- 7.60 Due to the elevation of strategic issues from the LDP to the SDP, there will be a consequential reduction in the scope and content of LDPs. Strategic issues such as the overall level of housing, employment, retail provision and strategic sites will have already been addressed and do not need to be repeated. It is estimated that approximately half of the cost of gathering the evidence base and cost of examination could be saved when preparing a light touch LDP. Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters, particularly site specific allocations, in accordance with the scale and location of growth set out in the SDP.
- 7.61 The introduction of SDPs will therefore lead to slimmer and more succinct LDPs, costing less and quicker to prepare. It has been estimated that the production of a light touch LDP could cost between £700,000 and £1,650,000. This would result in an estimated saving of between £700,000 and £550,000 compared to producing the current 'full' LDP which is estimated to cost between £1,400,000 and £2,200,000.
- 7.62 The overall cost of producing SDPs for South East Wales and light touch LDPs are compared to the current system of LDP production in the table below as an illustrative example.
- 7.63 The table identified ranges of estimated costs based on upper and lower estimates. The upper estimates are directly comparable and the lower ranges are directly comparable. It would not be appropriate to compare the upper estimate of one type of plan directly against the lower estimate of another as these calculations are based on different starting points.

*Table 7.5*

	<b>Current LDP system</b>	<b>Proposed SDP &amp; light touch LDP system</b>	<b>Comparison of costs</b>
	<b>Cost of producing a 'full' LDP</b>	<b>Combined cost of producing a SDP and 'light touch' LDPs</b>	<b>Overall cost or saving</b>
<b>SE Wales Region (10 authorities)</b>	£14,000,000 to £22,000,000	£10,700,000 to £20,200,000	<b>Saving</b> £3,300,000 to £1,940,000

- 7.64 The table shows that for the South East Wales region, the current system of producing 10 separate LDPs for each local authority costs between £14,000,000 and £22,000,000. The proposed cost of producing a single SDP and 10 light touch LDPs is estimated to cost £10,700,000 to £20,200,000. Based on these estimates there is potential for savings up to £3,300,000. Detailed workings and assumptions can be found in the methodology paper.

### Development Industry

- 7.65 There would be no additional costs to the development sector involved in the LDP process as this option would result in the redistribution of work between local and strategic matters.

### Statutory Consultees

- 7.66 There would be no additional costs to statutory consultees involved in the LDP process as this option would result in the redistribution of work between local and strategic matters.

### **Benefits**

- 7.67 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues. The proposal will not require any additional work. The issues that are currently addressed in a LDP will continue to be dealt with, but the strategic planning issues such as housing numbers, employment, transport, gypsy and traveller accommodation needs and minerals and waste will be dealt with once across a wider area. This would result in sharing of technical expertise, reduced costs and a collaborative approach to addressing larger than local issues. The proposed introduction of SDPs would reduce the duplication of work, for example, rather than each local planning authority commissioning work on Minerals and waste, this would be addressed once on a wider spatial scale in the SDP. It will therefore result in significant cost savings for LPAs when preparing the LDP evidence base. The introduction of SDPs will enable issues that often frustrate and delay the production of LDPs to be considered strategically and remove them from the LDP process. This approach is to plan for places, based on issues that extend beyond administrative boundaries. It reflects the role and function of places and how people live their lives and businesses to operate efficiently.

### Welsh Government

- 7.68 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues.

### Local Planning Authorities

- 7.69 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues.
- 7.70 This option retains democratic accountability as decision making power remains with locally elected members. As decision making would remain with locally elected members problems may potentially arise if they fail to make decisions on behalf of the wider strategic plan area. This model of strategic planning has been operational in Scotland since 2009, where four city regions have produced SDPs. A Review of the SDPs in Scotland conducted by Kevin Murray Associates (April 2014) found that some of the plans experienced difficulty in getting elected members to think strategically about the whole of

the city-region. The governance arrangements were found to add additional time to the process due to each constituent authority requiring separate ratification. This approach is similar to the current collaborative working arrangements for LDPs (as outlined in option 1) and therefore the risk of frustration to the process is significant, both in gaining agreement across an increased number of decision makers and timing.

### Development Industry

- 7.71 The requirement for a statutory SDP will result in a consistent, effective and efficient approach to strategic issues and should result in lower costs, for example by having to take part in fewer LDP examinations if strategic issues have been resolved once as part of the SDP examination.

### Statutory Consultees

- 7.72 This option will enable statutory consultees to respond to strategic issues once, ensuring consistency in their response.

### **Summary and Preferred Option**

- 7.73 Option 1 retains the current situation where strategic issues will continue to be addressed by LPAs individually through the preparation of LDPs, this option would not deliver more effective collaborative working practices and achieve the potential savings associated with this.
- 7.74 Option 3 proposes the delivery of SDPs by a collaborative governance arrangement. LPAs would jointly produce a SDP, which would require agreement by all constituent authorities. This option would achieve cost savings however the governance arrangements of this option may delay and frustrate the effective operation of the system.
- 7.75 Option 2 is the preferred option. It will achieve the objective to provide the statutory framework for strategic planning where it is required in Wales. The option retains democratic accountability throughout the process and minimises opportunities for any interest to block effective decision making. This option also has the potential to achieve the greatest cost savings.

*Table 7.6: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Welsh Government	-	£376,865	5 Year Cost (including one off set up cost)
Local Planning Authorities	-	£2,100,000	5 Year Cost

- 7.76 The summary of cumulative costs for the Bill are set out in Annex A

## **End date of Local Development Plans (Part 2, Section 10)**

### **Options**

7.77 Three options have been considered:

- Option 1 – Do nothing i.e. development plans are to retain their extant status until replaced or revoked.
- Option 2 – Require local planning authorities (LPAs) to set out the plan period for their development plan after which the development plan will no longer have development plan status.
- Option 3 – Require local planning authorities (LPAs) to set out the plan period for their development plan, after which the development plan will no longer have development plan status and there will be financial penalties.

### **Option 1 – Do Nothing**

#### **Description**

7.78 There would be no change to the current legislation under this option. The plan period for LDPs would stay in guidance and the LDP would remain the extant development plan following the expiry of the plan period, unless the planning authority, through the statutory four yearly review decides that some policies are out of date or superseded by other material considerations for the purposes of making decision on individual planning applications. National policy states “where development plan policies are outdated or superseded, LPAs should give them decreasing weight in favour of other material considerations” (Planning Policy Wales, paragraph 2.7). Guidance is also provided on keeping plans up to date in LDP Wales, section 4.45 that sets out how and when LDPs should be updated and the process linked with plan review. Plans adopted prior to LDPs, principally local plans and unitary development plans, they would remain, although it would be for the relevant local planning authority to determine the weight attached to a plan when making a decision, dependent on the nature of the evidence base supporting the plan and relevance to the decision being made.

#### **Cost**

##### Welsh Government

7.79 There are no costs to Welsh Government associated with this option.

##### Local Planning Authorities

7.80 As this option proposes no change, there are no additional costs associated with it. There are no costs associated with the current position with regard to setting a plan period for a development plan. There are current cost implications for LPAs when policies are out of date as they are more likely to lose appeals, and the costs associated with this. Out of date plans may not

effectively guide development and infrastructure investment as there is less certainty for investors. This option would not support the delivery of up to date development plans.

#### Development Industry

- 7.81 Where an authority has an extant development plan, which has not been updated, there are current cost implications for the development industry due to uncertainty and delay, as they may appeal more decisions by LPAs due to the lack of an up to date development plan. More appeals increases the cost to the overall application process for developers including costs from delays awaiting appeal decisions. There is less certainty for developers applying for permission within areas without an up to date development plan which may deter investment.

#### **Benefits**

#### Welsh Government

- 7.82 There are no direct benefits to Welsh Government associated with this option.

#### Local Planning Authorities

- 7.83 This option would mean that the development plan would retain its status until it is replaced or revoked. Planning Policy Wales sets out the weight to be attributed to out of date development plans, 'Where development plan policies are outdated or superseded LPAs should give them decreasing weight in favour of other material considerations, such as national planning policy, in the determination of individual applications.'

#### Development Industry

- 7.84 This option does not provide direct benefits as it does not achieve the benefits of an up to date plan led system.

**Option 2 – Require local planning authorities (LPAs) to set out the plan period for their development plan after which the development plan will no longer have development plan status.**

#### **Description**

- 7.85 The legislation will require LPAs to have a specific end date for their LDP beyond which it will cease to be the extant development plan for that area. This will provide clarity for decision making and ensure LDPs are kept up-to-date. It will also apply to adopted Structure Plans, Local Plans and Unitary Development Plans, so that where the plan period has expired, it will no longer be afforded development plan status.

## **Cost**

### Local Planning Authorities

- 7.86 There are no additional costs to LPAs as this option requires a date to be clearly displayed on the LDP. The current cost of producing a LDP is estimated between £1,400,000 and £2,200,000.
- 7.87 The local planning authority is required by LDP Regulation 41 to review their LDP every four years. This is an existing statutory requirement to review the LDP every four years and therefore there are no additional cost implications for LPAs.

### Development Industry

- 7.88 Under this option an up to date development plan will provide greater clarity for developers, reducing the number of appeals.

## **Benefits**

### Local Planning Authorities

- 7.89 Alongside other tools, this will help to ensure that LDPs are reviewed and updated regularly. This would therefore achieve the benefits of a plan led approach allowing development to be effectively managed and development management costs to be reduced.

### Development Industry

- 7.90 An up to date development plan gives the development industry clarity for investment decisions where a plan is time expired, national planning policy will be the starting point for decision making.

**Option 3 – Require local planning authorities (LPAs) to set out the plan period for their development plan, after which the development plan will no longer have development plan status and there will be financial penalties.**

## **Description**

- 7.91 The legislation will require LPAs to have a specific end date for their LDP beyond which they cease to be the extant development plan for that area. If a local planning authority fails to update the LDP before it expires then this will result in financial penalties. This will provide clarity to decision making and ensure LDPs are kept up to date . It will also apply to adopted Structure Plans, Local Plans and Unitary Development Plans, so that where the plan period has expired, it will no longer be afforded development plan status.

## **Cost**

### Welsh Government

- 7.92 The costs of this option to Welsh Government include administrating the collection and setting of the financial penalty and any further work if fines are not paid such as legal challenges, this is estimated to be around £150 per fine.

### Local Planning Authorities

- 7.93 There is the potential for additional costs to LPAs if they do not update their LDP before it expires as this would result in a financial penalty.
- 7.94 The financial penalty would be £400,000 and is something that would only be used as a last resort. The financial penalty has been calculated as the average annual cost of producing a LDP, plus 10%. This penalty is considered to be an incentive to achieve a plan, so it is higher than the cost of preparing a LDP. The financial penalty should be enforced on an annual basis, rather than a one off penalty.

### Development Industry

- 7.95 If this option delivers the review and revision of LDPs then it should reduce the amount of appeals being made by developers against the current situation due to an up to date development plan being in place setting the framework for decision making. However if the local planning authority is fined and the result is fewer resources available and delays to plan production then there may be cost implications for the development industry as they may appeal more decisions due to the lack of an up to date development plan. More appeals would increase costs to the overall application process for developers including costs from delays awaiting appeal decisions. There is less certainty for developers applying for permission within areas without an up to date development which may deter investment.

## **Benefits**

### Welsh Government

- 7.96 The benefits of this approach include the delivery of up to date development plans and the associated benefits of this which have been discussed under option 2.

### Local Planning Authorities

- 7.97 The prospect of expiry of the LDP will help to ensure that they are reviewed and updated regularly. The introduction of financial penalties could have a detrimental impact on the local planning authority's ability to produce a revised LDP due to decreased funding.

## Development Industry

- 7.98 If the provision delivers up to date development plans then the benefits are that this would give the development industry clarity for investment decisions and will help to guide development. However if the LPAs are fined then this may not result in LDPs being delivered due to resource impacts.

## **Summary and Preferred Option**

- 7.99 There are many benefits of a plan led approach to the planning system. They are the essential tool to identify the land required to meet society's need for homes and jobs and protecting the environment.
- 7.100 Option 1 proposes no change to current arrangements and does not provide an additional incentive to keep development plans up-to date. Option 2 is the preferred option as it will provide an effective incentive to ensure that development plans are kept up to date at no extra cost to the authority. Providing guidance alone has not been successful in the past in ensuring that plans are kept up to date.
- 7.101 Option 3 would deliver the benefits of option 2 however the financial penalty for not delivering the LDP may have significant resource implications for the local planning authority and further delay the delivery of LDPs.
- 7.102 This provision will also apply to the NDF and SDPs when in place.



## **Prior notification of Local Development Plan withdrawal (Part 2, Section 11)**

7.103 The purpose of the proposed power is to prevent potentially sound LDPs from being withdrawn unnecessarily. The costs incurred through implementation of the measure itself will be a minor administrative cost to comply with notification procedures. However, there are potentially large consequential savings up to £1,700,000 if a sound LDP is prevented from being unnecessarily withdrawn.

### **Options**

7.104 Three options have been considered:

- Option 1 – Do nothing i.e. Local planning authorities (LPAs) can withdraw their LDP at any time prior to submission.
- Option 2 – Prevent local planning authorities (LPAs) from withdrawing their Local Development Plan (LDP) unless they have notified Welsh Ministers prior to submission.
- Option 3 – Local Development Plans (LDPs) can only be withdrawn by direction of Welsh Ministers prior to submission.

### **Option 1 – Do Nothing**

#### **Description**

7.105 There would be no change to the current legislation under this option. This would mean that section 66 of the Planning and Compulsory Purchase Act 2004 would remain and LPAs would be able to withdraw LDPs without notifying the Welsh Government. This could result in LPAs withdrawing their plans at any time up until the plan has been submitted to Welsh Government.

7.106 A review of current legislation and experiences from emerging LDPs highlighted that although no local authority has withdrawn prior to submission, there is no ability to safeguard potentially sound plans and evidence from being withdrawn for non-planning reasons. This could result in increased delay and expense to the system.

7.107 Given that no local authority has withdrawn their LDP prior to submission and that it is not certain if (and how frequently) it will happen in the future, the cost and benefit figures presented below are illustrative.

## **Cost**

### Local Planning Authorities

- 7.108 As this option proposes no change, there are no additional costs associated with it. There are currently procedural costs associated with the process of withdrawing a LDP; gaining Council agreement to withdraw the plan, providing written notification to stakeholders, and consultees and ensuring a notice is published on their website and in the local newspaper. These costs have been estimated to be £2,200.
- 7.109 There are significant additional costs as a consequence of withdrawing a LDP as this would result in the plan and all the supporting evidence being withdrawn from the public arena and the process of producing a LDP would need to start again. Additional time and money would be required to refresh and or replace the evidence, which would increase delay and expense to the public purse. The notification period would help to avoid this situation. The estimated cost of producing a LDP for a LPA is estimated to be between £1,400,000 to £2,200,000 over 5 years, depending at what point of the preparation process the withdrawal was made.
- 7.110 If a local planning authority withdrew their LDP following Regulation 15 Preferred Strategy consultation stage, the estimated cost incurred by the local planning authority up to this stage ranges between £655,000 to £1,050,000. If a local planning authority withdrew their LDP immediately prior to submission of the LDP to Welsh Ministers for examination, the estimated cost incurred by the local planning authority up to this stage of plan preparation is £1,050,000 to £1,650,000. The details of the costing for the production including stages of the LDP process are set out the supporting methodology document.

### Development Industry

- 7.111 Private landowners and the development industry promote sites for inclusion within LDPs. They would therefore incur a cost when a LDP is withdrawn e.g. abortive costs incurred and/or investment decisions postponed due to the lack of clarity provided by a development plan. The cost incurred by the development industry cannot be quantified.

### Statutory Consultees

- 7.112 Statutory consultees, comprising of the Welsh Government, Natural Resources Wales and Dwr Cymru Welsh Water have a key role to play in the production of the LDP. If a local planning authority withdrew their LDP following Regulation 15 Preferred Strategy consultation stage, the estimated cost incurred by all statutory consultees up to this stage is between £45,000 to £61,000 for one LDP. If withdrawal occurred immediately prior to submission of the LDP, the estimated cost incurred by statutory consultees would be between £73,000 to £98,000.

## **Benefits**

### Local Planning Authorities

7.113 This option retains the flexibility for LPAs to withdraw their LDP at any time up to submission for examination.

### Development Industry

7.114 This option would not help to ensure the benefits of a plan-led system are delivered, as a LDP could be withdrawn at any stage up to submission for independent examination.

### Statutory Consultees

7.115 This option would not help to ensure the benefits of a plan-led system are delivered for the community, such as providing certainty and clarity, as plan could be withdrawn at any stage.

## **Option 2 – Prevent local planning authorities (LPAs) from withdrawing their Local Development Plan (LDP) prior to submission unless they have notified Welsh Ministers.**

### **Description**

7.116 This option requires LPAs to notify Welsh Ministers when they resolve to withdraw their LDP at any time prior to submission. This gives Welsh Ministers the opportunity to decide whether to use their existing intervention powers to progress the LDP. The Welsh Ministers will have power to direct the withdrawal of a development plan until adoption of the plan.

### **Cost**

#### Welsh Government

7.117 There are minimal costs associated with this option for the Welsh Government. The cost associated with this option could range from £260 to £3,700, depending on the work required to review the issues and reasoning presented by the local planning authority for withdrawing the plan. The use of intervention powers would not result in a direct cost to the Welsh Government those costs are recoverable from the local planning authority if the plan were called in section 71(6) of the Planning and Compulsory Purchase Act.

#### Local Planning Authorities

7.118 There are minimal administrative costs associated with this option for the local planning authority. The same costs apply as in option 1 (gaining Council agreement to withdraw the plan, providing written notification to stakeholders, communities and consultees and ensuring a notice is published on their website and in the local newspaper) which is estimated to cost £2,200. The

additional cost would result from the local planning authority having to formally inform the Welsh Government. The estimated cost of this is £65 which is based on a Development Plans Manager preparing the notification letter.

- 7.119 If Welsh Ministers utilised intervention powers to prevent a sound plan from being withdrawn this could potentially save the local planning authority up to £1,650,000 over 5 years, which is the estimated cost of preparing the LDP up until submission of the LDP to Welsh Ministers for examination. If the plan and supporting documentation and evidence base is withdrawn work would have to start from the beginning.

## **Benefits**

### Welsh Government

- 7.120 This option would provide an additional tool to deliver a plan led approach and the benefits this delivers. The absence of a plan would result in reduced confidence for investors and planning on an ad-hoc basis.

### Local Planning Authorities

- 7.121 This option would enable the local planning authority to only withdraw a LDP for sound planning reasons and would therefore ensure that the benefits of a plan led approach and effective use of resources are realised.

### Development Industry

- 7.122 If a sound plan was prevented from being withdrawn, this could potentially result in savings for the development industry in terms of resources used to engage in LDP preparation including the promotion of sites.

### Statutory consultees

- 7.123 If a sound plan was prevented from being withdrawn, this could potentially collectively save statutory consultees up to £98,000 over 5 years by them not having to go through the consultation process again on a new plan.

## **Option 3 – Local Development Plans (LDPs) can only be withdrawn prior to submission by direction of Welsh Ministers.**

### **Description**

- 7.124 This option would result in LPAs not being able to withdraw their LDP prior to submission unless they are directed to do so by Welsh Ministers.

## **Cost**

### Welsh Government

7.125 The cost for this option could range from a minimum cost of £260 to £3,700 and would vary according to the amount of work required to review the issues that justify why a plan should be withdrawn. The use of intervention powers would not result in a direct cost to Welsh Government as costs are recoverable from the local planning authority if the plan were called in section 71(6) of the Planning and Compulsory Purchase Act.

### Local Planning Authorities

7.126 There are no administrative costs incurred by the local planning authority as the power to be able to withdraw their LDP has been removed. Depending on what stage of the LDP process the authority had reached, the cost incurred by the local planning authority could be around £1,650,000 if the plan had reached the submission stage and Welsh Ministers directed that it must be withdrawn.

## **Benefits**

### Welsh Government

7.127 This option would prevent sound plans from being withdrawn and provides Welsh Ministers with the opportunity to consider using their powers of intervention.

### Local Planning Authorities

7.128 This option removes the power to withdraw an LDP from a local planning authority.

7.129 If the LDP had progressed to the submission stage of the LDP process, intervention by Welsh Ministers could potentially save the authority up to £1,700,000.

### Development Industry

7.130 If a sound plan was prevented from being withdrawn, this could potentially result in savings for the development industry through expenditure incurred in engaging with the LDP process including promoting sites for development.

### Statutory consultees

7.131 If a sound plan was prevented from being withdrawn, this could potentially save statutory consultees collectively up to £98,000, over 5 years.

## Summary and Preferred Option

7.132 Option 1 does not prevent sound plans from being withdrawn for non planning reasons. The consequence of this is additional cost to the local planning authority and other participants and delay in the delivery of the development plan system causing uncertainty for the community and the development industry.

7.133 Option 2 achieves the policy intention by allowing the Welsh Ministers an opportunity to consider the evidence to support LDP withdrawal and decide whether to use existing call in powers to progress a LDP to adoption. This is one of a range of tools to help to deliver a plan led approach and the benefits that come with that including clarity for the development industry and the community.

7.134 Option 3 is seen to add an unnecessary stage in the withdrawal process, and would take decision powers away from the local planning authority.

7.135 This provision will also apply to SDPs when in place

*Table 7.7: Total costs for the preferred option: Option 2*

	Existing Costs	Additional Cost from legislation	Comments
Welsh Government	-	£2,200	Per Case
Local Planning Authorities	-	£65	Per Case. Potential saving £1,700,000

7.136 The summary of cumulative costs for the Bill are set out in Annex A

## **Joint Local Development Plans (Part 2, Section 12)**

### **Options**

7.137 Two options have been considered:

- Option 1 – Do nothing i.e. there is a voluntary approach to producing Joint Local Development Plans (LDPs).
- Option 2 – Enable Welsh Ministers to direct local planning authorities (LPAs) to produce Joint Local Development Plans (LDPs).

### **Option 1 – Do Nothing**

#### **Description**

7.138 There would be no change to the current legislation under this option. This would mean that section 72 of the Planning and Compulsory Purchase Act 2004 would remain and the production of Joint Local Development Plans (LDPs) would continue to be a voluntary arrangement between LPAs.

#### **Cost**

##### Welsh Government

7.139 There are no costs to the Welsh Government for this option.

##### Local Planning Authorities

7.140 There are no additional costs associated with this option. The estimated cost of a single local planning authority producing a LDP is between £1,400,000 and £2,200,000. The estimated cost if two LPAs producing a Joint LDP is estimated to be between £2,200,000 and £3,350,000. This is set against two LPAs producing two separate LDPs which are estimated to cost between £2,800,000 and £4,400,000, over 5 years.

7.141 Potential savings could be made in the following areas of LDP production; when LPAs choose to produce a joint plan; staff costs; cost of gathering a robust evidence base, examination cost, printing costs, translation costs, cost of adverts and IT costs. The maximum cost savings that could result from two LPAs producing a joint LDP is estimated to be £2,050,000. This is a saving of 47% of the cost for LPAs preparing two separate LDPs. In practice it is likely that the savings are less than the maximum being in the region of £650,000 to £1,050,000, which equates to around a 25% saving, over 5 years.

## Development Industry

7.142 The costs to the development industry will remain at current levels apart from those with interests in more than one authority. In instances where organisations/ public are interested in both areas of the joint LDP it could lead to reducing costs in responding to consultations and attending stakeholder events or hearing sessions.

## Statutory Consultees

7.143 Whilst the number of issues and proposed development sites to consider will remain unchanged, a joint LDP could lead to reduced costs of approximately £107,000 - £160,000 (50%) in responding to consultations and attending stakeholder events and hearing sessions.

## Initial costs

7.144 It is acknowledged that there is likely to be a time delay in realising the estimated savings. Initial expenditure on making IT systems and general working practices compatible may be required.

## **Benefits**

### Local Planning Authorities

7.145 This option has the benefit of not requiring legislative action or the cost of implementing new legislation. A Joint LDP could consist of two authorities or more. Due to the economies of scale, the more authorities merged to produce an LDP the greater the potential savings.

### Stakeholders

7.146 A Joint LDP will enable larger than local issues to be addressed at an appropriate scale and will allow stakeholders to engage in the process at a strategic scale at one time rather than through each individual plan which may be progressing at different times.

## **Option 2 – Enable Welsh Ministers to direct local planning authorities (LPAs) to produce Joint Local Development Plans (LDPs).**

### **Description**

7.147 This option would result in Welsh Ministers having powers to direct two or more LPAs to produce a Joint LDP. A power to direct the production of Joint LDPs will provide a tool to address strategic issues effectively and not rely on a voluntary approach. LPAs will still be able to adopt a voluntary approach and not wait for a direction by Welsh Ministers. The approach complements the proposals for SDPs.



## **Cost**

### Welsh Government

7.148 There are minimal costs associated with this option for the Welsh Government. The costs would result from the time and resource required to consider the use of the direction power. The cost for this option could range from £260 to £3,700 and would vary according to the amount of work required to understand the issues and justify why a Joint LDP should be produced. This could also result in fewer single authority LDPs across Wales and time spent considering these plans may reduce, depending on the scale, nature and complexity of issues being considered.

### Local Planning Authorities

7.149 There are no additional costs for LPAs associated with this option. There could be savings in time and resources associated with evidence gathering.

### Stakeholders

7.150 The costs to the community, stakeholders and business will be the same as those outlined in option 1.

## **Benefits**

### Welsh Government

7.151 This option would enable the Welsh Ministers to direct LPAs to produce a Joint LDP where this is required to ensure that issues that are of greater than local significance are considered as part of the development plan process. Rather than local planning authorities dealing with these independently and thus not addressing strategic issues appropriately and effectively a joint approach will mean that issues are properly addressed.

### Local Planning Authorities

7.152 LPAs can deal with issues of larger than local significance more effectively and achieve resource efficiencies when producing Joint LDPs.

7.153 A Joint LDP could consist of two authorities or more. The potential cost-savings when two planning authorities produce a joint LDP have been considered under option 1. Due to the economies of scale principle, the more authorities merged to produce an LDP the greater the potential savings. The estimated savings of three authorities preparing a joint LDP has been estimated to be between £1,450,000 and £2,300,000, over 5 years. This equates to a saving of 35%, compared to an estimated saving of 25% for two authorities preparing a joint LDP.

## Stakeholders

7.154 A Joint LDP will enable larger than local issues to be addressed at an appropriate scale and will enable stakeholders to engage in the process once rather than through each individual plan which may be progressing at different times.

### **Justification for two options**

7.155 A third option is not proposed. It is considered that there is no other reasonable way of achieving the policy intention.

### **Summary and Preferred Option**

7.156 The evidence highlights the benefits of increased collaborative working to deal with larger than local issues effectively and achieve resource efficiencies Joint LDPs are a key tool in achieving this.

7.157 Option 1 provides the framework to achieve the benefits of increased joint working however to date this voluntary approach has been progressed by two LPAs Gwynedd and Ynys Mon.

7.158 Option 2 is the preferred option, LPAs are currently encouraged to work collaboratively on issues including joint evidence gathering. The evidence clearly indicates that this has not robustly addressed issues that are of greater local significance. This option enables collaborative working to be achieved and associated benefits realised, including resource savings.

*Table 7.8: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost/ Saving from legislation</b>	<b>Comments</b>
Welsh Government	-	£2,000	Cost Per Case
Local Planning Authorities	-	-£850,000	Saving Per Case
Statutory Consultees	-	-£107,125	Saving Per case

7.159 The summary of cumulative costs for the Bill are set out in Annex A

## **Joint Planning Boards (Part 2, Section 13)**

7.160 Two options have been considered:

- Option 1 – Do Nothing, Joint Planning Board power would remain the same therefore they would not be able to produce a Local Development Plan (LDP).
- Option 2 - Update legislation contained in Section 2 of the Town and Country Planning Act 1990 to enable Joint Planning Boards to perform all modern local planning authority functions including preparation of LDPs.

### **Option 1 – Do Nothing**

#### **Description**

7.161 There would be no change to the current legislation under this option and the powers for Joint Planning Boards would remain the same. Section 2 of the Town and Country Planning Act 1990 provides the Welsh Ministers with powers to establish a joint planning board as the local planning authority for two or more areas. The powers in Section 2 do not currently extend to the inclusion of any area which is within a National Park or to the performance of certain local planning authority functions. The key function that a Joint Planning Board is not currently able to undertake is the ability to prepare a LDP for the combined area.

#### **Cost**

##### Welsh Government

7.162 As this option proposes no change, there are no additional costs associated with it.

7.163 The current legislative provisions would essentially allow for the merging of local planning authority Development Management functions only as the current legislation does not allow for Joint Planning Boards to carry out plan making functions.

7.164 The costs for running a local planning authority development management function in Wales are estimated to range between £370,000 to £1,650,000 per year.<sup>8</sup>

7.165 The costs for running a local planning authority development management function in Wales are estimated to range between £370,000 to £1,650,000 per year.<sup>8</sup>

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<sup>8</sup> Figures based upon costs of running pure Development Management function, excluding wider costs of those other specialist groups that may have an input into this service such as Environmental Health and Legal Services.

### Local Planning Authorities

7.166 The costs for running a local planning authority development management function in Wales are estimated to range between £370,000 to £1,650,000 per year.<sup>8</sup>

7.167 These figures do not take into account any income received by LPAs from receipt of planning application fees. This option would not result in any additional costs for Development Management functions.

### Stakeholders

7.168 There is no change to the costs incurred by communities, stakeholders and businesses.

### **Benefits**

7.169 This option has no additional benefits other than it would neither require legislative action nor the cost of implementing new legislation.

## **Option 2 – Update legislation contained in Section 2 of the Town and Country Planning Act 1990 to enable Joint Planning Boards to perform all modern local planning authority functions**

### **Description**

7.170 Welsh Ministers would have the power to establish Joint Planning Boards as the local planning authority for two or more Welsh county council or county borough council areas. These boards would be able to perform all local planning authority functions including preparing a LDP for the area. National Park Authority planning functions would remain separate.

### **Cost**

7.171 The cost assumption is based on establishing Joint Planning Board through the merger for two local planning authority areas.

### Welsh Government

7.172 There are minimal costs associated with this option for the Welsh Government. The costs would result from the time and resource required to consider the use of the order. The cost for this option could range from £260 to £3,700 and would vary according to the amount of work required to review the issues and justify why a Joint Planning Board should be formed.

## Local Planning Authorities

### *Costs of Merger: Development Management Functions*

7.173 Section 2 of the Town and Country Planning Act 1990 already allows for merger of Development Management functions when establishing a Joint Planning Board. There are considered to be limited costs in respect of the merger of Development Management functions of LPAs. There may be some transitional costs such as the changes to internal systems, this is estimated to be between £18,500 - £82,500 (5% of total DM costs). There would be limited savings in terms of Development Management function as there would be no reduction in the overall amount of planning applications to determine. There may be a small reduction in management costs. This would be associated with a reduction in staff at senior grades, such as a single Chief Planning Officer per authority. However these savings are anticipated to reduce as the extent of the merged planning area increases. This would be due to senior staff salaries increasing, reflecting relatively greater responsibilities and supporting management structures. The range of existing costs for Development Management functions in Wales are previously detailed in option 1.

### *Costs of Merger: Development Planning Functions*

7.174 It is considered that the costs for setting up a Joint Planning Board for two local planning authority areas would result savings in respect of producing LDPs, as only one LDP would be required to be produced for the Joint Planning Board area. These costs savings mirror those in respect of the provisions for two LPAs preparing a Joint LDP.

7.175 Potential savings are likely to be in the region of £650,000 to £1,050,000, over five years, which equates to around a 25% saving.

## Stakeholders

7.176 The costs to the community, stakeholders and business cannot be estimated. In instances where organisations/ public are interested in the Joint Planning Board area it could lead to reducing costs in responding to fewer consultations and attending less stakeholder events. Additional costs may be incurred if local planning services are more distant. Whilst the number of issues and proposed development sites to consider will remain unchanged, a joint development plan could lead to reduced costs of approximately £107,000 - £160,000 (50%) in responding to consultations and attending stakeholder events and hearing sessions.

## Benefits

### Welsh Government

7.177 Providing legislation to enable Joint Planning Boards to carry out the full range of local planning authority functions should improve the resilience and efficiency of local planning services. It should allow better decisions to be made making full use of specialist technical expertise, which may be absent in smaller LDPs, The current legislation does not allow for this option to be achieved in a holistic manner.

### Local Planning Authorities

7.178 It would provide for an increased financial saving for LPAs if a Joint Planning Boards were established as they would be required to merge their planning policy functions in addition to their development management functions.

## Justification for only two options

7.179 The scope of the proposed legislation is to allow a Joint Planning Board to perform the functions of a LPA including the ability to prepare an LDP. Removing the existing legislation is not an option as this would not achieve the policy intention.

## Summary and Preferred Option

7.180 Option 1 does not enable the comprehensive merger of local planning authority functions to allow LDP preparation to be carried out by a Joint Board. It does not deliver the policy objective for resilient local planning services

7.181 Option 2 is the preferred option as it will ensure that Joint Planning Boards with the power to carry out the full range of local planning authority functions covering both development plans and development management.

*Table 7.9: Total costs for the preferred option: Option 2*

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	-	£2,000	Cost Per Case
Local Planning Authorities	-	-£850,000	Saving Per Case
Statutory Consultees	-	-£107,125	Saving Per Case

7.182 The summary of cumulative costs for the Bill are set out in Annex A

### Guidance

7.183 There will be a cost, through the production of appropriate guidance, explaining the changes to the development plan system in Wales. These costs are estimated to be £50,000; this will be borne by the Welsh Government.

*Table 7.10: Total costs for the Development Plans Section*

	Existing Costs		Additional Costs		Additional Savings	
	5 Year Cost	One off Cost	5 Year Cost	One Off Cost	5 Year Cost	One Off Cost
Welsh Government	£336,070	-	£465,464	£6,000	-	-
Local Planning Authorities	-	-	£2,100,000	£25	Potential £2,550,000	-
Statutory Consultee						£214,250 <sup>9</sup>

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<sup>9</sup> Likely to be half of this cost as would only use either joint LDP or Joint Planning Board power in one area.

## Pre-Application

### Pre-application community consultation (Part 3, Section 15)

#### Options

7.184 Three options have been considered:

- Option 1 - Do nothing i.e. continue with the current discretionary approach in which developers choose whether or not to engage directly with communities at the pre-application stage.
- Option 2 - Introduce a requirement for pre-application community consultation on all major planning applications.<sup>10</sup>
- Option 3 - The Welsh Government to issue guidance on the benefits of pre-application consultation by developers with communities.

#### Option 1 – Do Nothing

##### Description

7.185 There would be no change to the current legislation under this option. It would be up to the developer's discretion whether to engage with communities at the pre-application stage.

##### Costs

###### Welsh Government

7.186 There are no additional costs to the Welsh Government since guidance is already in place<sup>11</sup>.

###### Local Planning Authorities

7.187 This option does not result in any additional costs to LPAs.

###### Development Industry

###### *(i) potential delay in determination of planning applications*

7.188 If developers do not engage in pre-application community consultation, the lack of public involvement has the potential to be reflected in an increased number of representations / objections at the planning application stage and a need for amended plans, which can lead to a delay in the decision making process.

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<sup>10</sup> "Major development" is defined in the [Town and Country Planning \(Development Management Procedure\) \(Wales\) Order 2012](#) (see Appendix 1)

<sup>11</sup> [Realising the potential of pre-application discussions \(May 2012\)](#)



7.189 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the 'cost of delays to the development industry' section in 7.4.

*(ii) costs of engaging with communities at pre-application stage*

7.190 If developers choose to engage with communities at pre-application stage, the costs will vary. Developers will normally appoint planning consultants to undertake any pre-application community engagement. Typically, such engagement may range from producing and distributing leaflets for smaller developments to hosting a public meeting, exhibition or forum for larger projects. Developers may also want to ensure their planning application addresses public concerns; this can necessitate changes to development proposals and the preparation of engagement statements to accompany subsequent planning applications.

7.191 There is not a standard cost for conducting community consultation and engagement, as costs are dependent on factors such as the applicant's access to printing facilities, staff costs and a location for holding events. The scale of engagement will vary according to the nature of the application, and whether it affects a small number of people, or a larger population. The paragraphs below estimate the likely costs.

*Sample costs to publicise a development proposal*

7.192 The methodology paper<sup>12</sup> gives an indication of the cost per application that LPAs face when publicising planning applications. The data contains current advertising costs, the costs of stationery (printing costs etc.) and postage costs. Despite actively seeking the information, we have been unable to establish the cost for the development industry of publicising pre-application developments but consider that basic publicity costs will be similar to LPAs, i.e. £40 per scheme.

*Analysis of responses*

7.193 Developers who currently engage in pre-application public consultation may analyse representations from members of the public and submit details of these in a report to the local planning authority.

7.194 The cost for this would therefore be the time taken to collate the information and write a report. The time taken to undertake this work would depend on how much information the developer receives from the public. Based on the data obtained from a number of UK planning consultancies, the average hourly rate for professional planners is approximately £40.

7.195 The time taken to analyse comments and produce a report will vary considerably depending on the number of comments received and the

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<sup>12</sup> Source: LPA data returns for 2013

complexity of the issues raised. For example a small scheme, of 10 houses in a city-centre location, may attract a handful of responses that could comfortably be analysed and compiled into a report in a single day – based on a 8 hour day this equates to a cost of £320. By comparison, it is estimated that a large development of, 500 houses, that attracts 100 responses, would require about 3 to 4 days of a planning consultant's time, which equates to a cost of between £960 and £1,280.

- 7.196 The total cost for the developer of undertaking a basic level of pre-application community consultation is therefore estimated to be between £360 and £1,320. But this cost is discretionary as under this option, developers choose whether to engage with communities.

## **Benefits**

### Development Industry

- 7.197 The current approach leaves the decision on whether to conduct pre-application community consultation with the developer. There are no prescribed standards for such consultation procedures, meaning they are in control of expenditure and costs of engagement. Where they feel community engagement is needed, or could be beneficial, they can choose to do it. They can also tailor pre-application community consultation to fit the circumstances and situation. Equally they may choose not to engage with the community where they feel it serves no beneficial purpose.

### Local planning authorities

- 7.198 Where pre-application consultation has taken place it can reduce the number of representations and objections at planning application stage as the public have already been informed of the proposed development, they have a better understanding of its impact, and they have been able to influence the scheme at an early stage. However this benefit is not fully secured by option 1 due to the discretionary approach. LPAs will need to process objections and dealing with queries from members of the public which is resource intensive.

### The Community

- 7.199 The community are currently invited to engage in pre-application discussions when the developer chooses to undertake such activities. This usually means that when pre-application engagement is offered then it is meaningful. However, under option 1, in many cases the public will not benefit from pre-application consultation because pre-application community engagement will remain discretionary.

## **Option 2 – A requirement for pre-application community consultation on all major applications with the submission of a pre-application consultation report to the LPA**

### **Description**

7.200 Regulations would require pre-application community consultation to be carried out by the applicant for major development<sup>13</sup> proposals. The Welsh Government would specify what form the consultation should take in secondary legislation and in a supporting guidance document. To ensure compliance with the regulations, the applicant will be required to submit a pre-application consultation report alongside the planning application, in order to enable the local planning authority to validate the application. For non-major application the process would remain voluntary.

### **Costs**

#### Welsh Government

7.201 Procedural guidance on the delivery of the proposals will be developed for LPAs, this will include any sample templates associated with the pre-application community consultation process. This will help to ensure a consistent approach. Costs are set out at the end of the development management section.

#### Local planning authority

7.202 LPAs are already responsible for validating planning applications and supporting information. Validation of the pre-application consultation report will be undertaken as part of this existing process and will therefore not generate an additional cost.

#### Development Industry

7.203 There will be additional costs for those developers who submit major planning applications that are not currently subject to pre-application consultation.

7.204 Welsh Government monitoring data shows that 583 major applications were determined in Wales during 2013. Analysis of major planning applications in 2013 suggests that about 25% were supported by some form of pre-application community consultation.

7.205 Option 1 estimates the cost to the developer of publicising developments and producing a summary report could be between £360 and £1,320. We envisage that the statutory requirement for pre-application community consultation will require the developer to notify neighbours of their plans by letter and site notice and report the outcome of the consultation. The figures

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<sup>13</sup>“Major Development” is defined in the [Town and Country Planning \(Development Management Procedure\) \(Wales\) Order 2012](#) Order 2012

of £360 to £1,320 per major application are considered to represent a reasonable estimate of the statutory minimum costs of option 2 to the developer.

7.206 As it is estimated that 25% of major applications are already subject to pre-application community consultation, it is expected that this additional cost would fall on about 75% of proposals for major development.

7.207 Based on the number of major applications determined in 2013, the estimated total additional cost to the development industry as a whole of option 2 would therefore be between £157,000 and £577,000 per year.

7.208 Although we do not have figures on the average costs of preparing a planning application in Wales, Arup<sup>14</sup> have estimated costs based on a selection of LPAs in England. For example, the median costs of securing planning permission for various types of major development is between £18,000 and £80,000 per planning application. Whilst the Arup data is based on English LPAs and planning application costs in Wales may be lower, it does show that the additional cost of option 2 equates to a small proportion (about 2%) of the overall cost to the developer of preparing a planning application.

### The Community

7.209 There is no requirement for the community to be involved in pre-application consultation – the process provides an opportunity for the public to engage with the developer. So option 2 does not result in any additional financial cost to the community.

## **Benefits**

### Local planning authorities

7.210 Pre-application consultation may result in fewer objections received from members of the community when the full planning application is received. The need for amendments to applications will be reduced which will save staff time and resources. A further benefit for LPAs is that a smoother application process will facilitate decision making within statutory targets.

### Development Industry

7.211 According to a report by the Local Government Association in association with the British Property Federation<sup>15</sup>, pre-application engagement should lead to high quality and appropriate development schemes being granted planning permission more quickly. Early, collaborative discussions between developers, public sector agencies and the communities affected by a new development can help to shape better quality, more accepted schemes and

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<sup>14</sup> [Benchmarking the costs to applicants of submitting a planning application \(July 2009\)](#)

<sup>15</sup> [10 Commitments for effective pre-application engagement \(January 2014\)](#)

ensure improved outcomes for the community. These discussions also avoid wasted effort and costs.

- 7.212 Having undertaken pre-application consultation the planning application should be subject to fewer objections. This should result in fewer delays to the overall scheme, facilitating a quicker decision on the development which reduces significant costs for the developer.
- 7.213 There are further indirect benefits to developers from engaging successfully with the community. Consultation may not always resolve conflicts, but it shows a willingness to listen and consider alternative views and can result in better relations between the developer and the community.

### The Community

- 7.214 The key difference is that under this option, the community has an opportunity to benefit from consultation prior to submission on all major planning applications and not only those where the developer chooses to engage. It will ensure that communities in the vicinity of all major applications are made aware of draft proposals and offered a meaningful and early opportunity to influence the scheme.
- 7.215 This option would facilitate a consistent approach to pre-application community consultation across Wales.

## **Option 3 – Welsh Government to issue guidance on the benefits of pre-application community consultation**

### **Description**

- 7.216 Guidance that focuses specifically on the benefits of pre-application community consultation would complement and build on guidance already issued regarding the potential of pre-application discussions<sup>16</sup>.
- 7.217 As with option 1, pre-application community consultation would remain a discretionary part of the application process for applicants. It would not resolve the inconsistent basis which developers engage in pre-application consultation.

### **Costs**

- 7.218 The costs of this option are considered to be the same as for option 1 for the majority of parties. Additional guidance will not necessarily result in the use of pre-application community consultation.

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<sup>16</sup> [Practice Guide: Realising the potential of pre-application discussions \(May 2012\)](#)

## Welsh Government

7.219 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section.

## Local planning authorities

7.220 No additional costs to the LPA.

## Development Industry

7.221 Additional cost to the development industry depends on the impact of guidance. In cases where pre-application community consultation already occurs or where the guidance is ignored, there will be no additional costs. When developers are influenced by the guidance and, as a result, undertake pre-application community consultation the costs outlined in Option 1 are likely to apply.

## **Benefits**

## Local planning authorities

7.222 Where the guidance is followed by developers, LPAs may benefit from a more consistent approach to pre-application community consultation and potentially fewer objections or representations received from members of the public. However the discretionary nature of option 3 means that these benefits are likely to be less than a mandatory approach.

## Development Industry

7.223 The benefits of this option, like costs, are very similar to option 1, as there is no compulsion for developers to engage with communities. Specific guidance on the benefits of pre-application community consultation, to complement existing guidance which says it should be considered by developers, may persuade them of its benefits. However there are no penalties proposed in the event of a failure to provide engagement opportunities, and there are no additional incentives for developers to undertake the exercise than they currently do.

## The Community

7.224 Should the developer follow guidance issued by Welsh Government, communities may have a greater say on proposed development which could potentially affect them and would provide clarity and consistency. But this benefit is dependent on the developer choosing to undertake pre-application consultation.

## Summary and Preferred Option

- 7.225 The principle of pre-application community consultation is generally accepted and welcomed by users of the planning system.
- 7.226 Option 1 proposes no change to current arrangements. Developers may choose to engage with communities at the pre-application stage, using any method they feel is appropriate. There is no prescribed process and therefore communities may not fully benefit from pre-application engagement.
- 7.227 Option 3 may deliver better outcomes than the 'do nothing' option. There are additional costs to the Welsh Government of producing guidance, but no compulsion for it to be used by developers. It would remain a discretionary process but may deliver some improvement in consistency for local communities.
- 7.228 Option 2 makes pre-application discussions with communities a mandatory requirement on all major planning applications. This option would give communities confidence that their views are important; the mandatory Statement of Pre-application Consultation which will be submitted alongside the planning application to the local planning authority will indicate whether those views have been taken into account. There will be limited additional costs associated with option 2 to the developer, but it will reduce conflict and controversy at the planning application stage, reducing the risk of delay. These factors are considered to outweigh the financial cost of undertaking pre-application consultation, which would form a small part of the overall cost of preparing a major planning application. As such, option 2 is the preferred option.

*Table 7.11 Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Development Industry	-	£367,000	Annual Cost

- 7.229 The summary of cumulative costs for the Bill are set out in Annex A

## **Pre-application service and fees (Part 3, Section 16)**

### **Options**

7.230 Four options have been considered:

- Option 1 - Do nothing i.e. continue with the current provision of pre-application service by local planning authorities (LPAs) on a discretionary basis.
- Option 2 - Introduction of a statutory pre-application service with a charge.
- Option 3 - Introduction of a statutory pre-application service without a charge.
- Option 4 - The Welsh Government to issue more prescriptive guidance on the provision of discretionary pre-application services with fees charged on a discretionary basis.

### **Option 1 – Do nothing**

#### **Description**

7.231 Under this option LPAs would continue to offer pre-application services on a discretionary basis meaning there is no consistency in service provision. LPAs would retain the ability to charge different fees for the pre-application service, with some offering free advice, and others recovering costs by charging.

#### **Costs**

##### Welsh Government

7.232 No additional costs. The Welsh Government has produced guidance on the pre-application process.

##### Local Planning Authorities

7.233 This is a discretionary service so there is no cost to those LPAs that choose not to provide a pre-application service. However most LPAs provide a pre-application service to developers. The costs to the LPA are associated with the time taken to administer and resource the pre-application engagement. This can be highly variable depending on the complexity and scale of the application.

7.234 Whilst the costs to LPAs will vary, Welsh Government data<sup>17</sup> can be used to estimate the cost of different types of pre-application service. For example, the cost to LPAs of providing a written response, based on two hours of planning officer's time, would be approximately £50. The cost to the LPA of a planning officer attending an hour long meeting would be approximately £25.

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<sup>17</sup> LPA data returns to Welsh Government, 2014. (hourly rates include on-costs)



And a series of 5 meetings, each lasting an hour each, involving a principal planner and a senior planning officer, would cost approximately £300.

- 7.235 LPAs have the ability to charge for discretionary services under Section 93 of the Local Government Act 2003 meaning that LPAs have the ability to recoup the costs of providing a pre-application service.

### Development Industry

#### *Costs of delay and uncertainty in the decision making process*

- 7.236 Pre-application engagement between the developer and the LPA should, “lead to high quality and appropriate development schemes being granted planning permission more quickly”<sup>18</sup> and can, “improve the quality of applications and help reduce the time taken to deal with a formal application”.<sup>19</sup>
- 7.237 If a developer wants to engage with the LPA at pre-application stage but the LPA does not offer a pre-application service, benefits of pre-application engagement will not be secured. The lack of pre-application engagement between the developer and LPA can result in delayed decision making, which places a financial cost on the developer.
- 7.238 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the ‘cost of delays to the development industry’ section in 7.4.

#### *Costs to the developer of engaging with the LPA*

##### (i) submitting the pre-application enquiry form

- 7.239 Most LPAs in Wales that provide a pre-application service require developers to submit information on a standard form in order to initiate their pre-application service. Some developers may undertake their own pre-application enquiries with LPAs but most will appoint a planning consultant.
- 7.240 Based on data obtained from a number of UK planning consultancies the average professional / graduate planning consultant’s fee is approximately £40 per hour. It is estimated the task of completing a short form would take no longer than between 15 and 30 minutes. Therefore, the costs of submitting the initial enquiry would be between £10 and £20.

##### (ii) follow-up meetings

- 7.241 The time allocated for pre-application meetings with the LPA is highly variable and will depend on the nature of the application. The developer may need to

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<sup>18</sup> [10 Commitments for effective pre-application engagement \(January 2014\)](#)  
<sup>19</sup> [Planning Policy Wales - Edition 7 \(July 2014\) Paragraph 1.3.8](#)

be supported by professional representation (e.g. planning consultants, architects and ecologists). Some proposals may only require a written confirmation response from the LPA following the meeting. However developers may request a number of follow-up meetings with the LPA when they are proposing more complex schemes that involve a number of technical issues.

7.242 Using data obtained from a number of UK planning consultancies, the cost of a planning consultant attending an hour long meeting with the LPA would be approximately £40. And a series of 5 meetings each lasting an hour each, which, for example, could require representation from a planning consultant and an architect is estimated to cost approximately £40<sup>20</sup>.

### (iii) LPAs charges for the pre-application service

7.243 Section 93 of the Local Government Act 2003 allows LPAs to charge for the provision of discretionary services. Such services include the provision of pre-application services.

7.244 Developers that wish to engage with the LPA at pre-application stage face uncertain costs as there are different charging schedules for the same development type across different LPAs (see methodology paper). As the current system is discretionary, the developer does not necessarily get the same level of service across each LPA for the fee paid.

7.245 LPAs have the power to amend charges, providing they meet the terms of Section 93 of the Local Government Act 2003. Those LPAs that do not currently charge for their pre-application service could do so. This results in further uncertainty and potential for inconsistency.

## **Benefits**

### Welsh Government

7.246 There is no benefit to the Welsh Government as a discretionary service does not facilitate universal availability of pre-application engagement when requested by developers.

### Development Industry

7.247 In some cases the developer may not have to pay a fee for the pre-application service. But inconsistent charging practices among LPAs will remain – the developer could be charged different amounts for the same type of development proposal depending on the LPA involved. The level of service provided to developers by LPAs may also be inconsistent.

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<sup>20</sup> Hourly rates for architects derived from [Annual Survey of Hours and Earnings - 2013 Provisional Results \(December 2013\)](#)

## Local Planning Authorities

7.248 The LPAs retain flexibility on the type of pre-application service they provide and retain control over charging.

### **Option 2 - Introduction of a statutory pre-application service with a national fee**

#### **Description**

7.249 This option is the same as option 3 outlined below, except that it proposes a national charge for statutory pre-application discussions. The intention is that the national fee for the statutory pre-application service will be based on an average of the existing discretionary LPA charges, which are set on a cost recovery basis.

7.250 The setting of fees for the statutory pre-application service will be subject to further consultation and will require an amendment to the fees regulations in Wales. Any amending legislation would be supported by its own Regulatory Impact Assessment.

#### **Costs**

## Welsh Government

7.251 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section.

## Local Planning Authorities

7.252 As most LPAs do not currently charge for the pre-application service, this would give them the ability to charge a fee to cover the costs associated with this service.

7.253 The national fee is based on an average of the existing discretionary fees that LPA charges to cover the cost of this service.

7.254 LPAs will also have to set up and administer the new statutory pre-application service. However as most LPAs already provide some form of pre-application service; this will involve updating on-line forms and guidance notes. The Welsh Government will provide sample proformas for the process in national guidance which LPAs will be able to upload to their websites – the costs for this work is set out in paragraph 7.282.

7.255 Where LPAs provide a pre-application service that is more comprehensive than the basic statutory service, they will still be able to charge for the enhanced elements of the service using Section 93 of the Local Government Act 2003.

## Development Industry

- 7.256 Subject to the outcome of further consultation, at this stage we envisage that the proposed standard national fee for the pre-application service would be based on the current discretionary charges on the grounds that any charges under Section 93 of the Local Government Act 2003 should be made on a cost recovery basis.
- 7.257 Many LPAs do not currently charge for their pre-application service and in these areas developers will incur an additional fee. However the intention is to use an average of the LPA's discretionary charges as the basis for a national pre-application fee but there would be no fee for householder planning applications. For developers that seek a pre-application service from LPAs that currently charge, this option is unlikely to generate a significant additional financial burden.
- 7.258 This option does not place any statutory duties on the developer. If a developer does not request a pre-application service from the LPA then there is no resulting cost.
- 7.259 Some LPAs may wish to provide an enhanced pre-application service that goes further than the statutory minimum requirement, charging for those services that go beyond the statutory minimum, using Section 93 of the Local Government Act 2003. Developers can choose whether they want to pay for any enhanced service.
- 7.260 Where LPAs currently charge for their householder pre-application service, there would be a cost saving for the developer/applicant
- 7.261 Some cases there will be a cost saving for the development industry. For example, the average cost of a pre-application query for a housing development of 20 units, would be £522 based on the average of existing charges. In some cases, this average cost is more than the current discretionary LPA charge, in others it is significantly less than the current discretionary LPA charge.
- 7.262 For example, if 5 pre –application schemes for 20 residential units were submitted to LPAs at the lower and upper end of the charging scale (i.e. £220 and £1,200 respectively) - a total of 10 pre-application enquiries - the overall cost to the development industry of the pre-application service would be £7,100. If a national fee for the statutory pre-application service was set at £522, the cost to the development industry of submitting 10 pre-application service requests would be £5,220. In this scenario there would be a saving for the development industry.

## **Benefits**

### Welsh Government

7.263 This option would contribute towards facilitating and encouraging pre-application engagement between developers and LPAs and provide clarity and consistency of approach for all.

### Local Planning Authorities

7.264 If LPAs have a statutory pre-application service in place, it would enable them to influence development from an early stage in the process which could facilitate faster decision making. The LPA would recover the cost of providing the new statutory pre-application service.

### Development Industry

7.265 There would be certainty for the developer in terms of the fee to be paid for the statutory service, rather than the developer facing variable charges and levels of service across different LPA areas.

7.266 A research report commissioned by the Welsh Government<sup>21</sup> states that, in England, charging for the pre-application service advice (especially for major applications) has not been a disincentive to applicants and has allowed the service to be properly resourced.

7.267 This option could potentially increase participation in pre-application discussions from developers as they might be more likely to engage if they know there is a set fee and that the fee that covers a specific, service to set standards.

## **Option 3 – Introduction of a statutory pre-application service with no fee**

7.268 This option proposes that LPAs will be required to provide a pre-application service to applicants when this service is requested. There would be no charge to the developer and therefore the LPA would receive no fee for the service they provide.

## **Costs**

### Welsh Government

7.269 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section.

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<sup>21</sup> [Evaluation of the planning permission process for housing \(October 2013\)](#)

## Local Planning Authorities

7.270 Web-based research indicates that only 6 LPAs charged for their pre-application service LPAs that charge would lose income if option 3 is pursued.

7.271 Data provided to the Welsh Government<sup>22</sup> indicates that where pre-application fees are charged they provide between £10,000 and £28,000 income per LPA per year. Under option 3, this income will be lost also, the lack of a fee may encourage additional developers to request pre-application advice, meaning those LPAs that currently charge could, potentially, be further disadvantaged. For example, if pre-application enquiries increase by 10% then, based on a similar increase in fee income, an additional £1,000 to £2,800 per LPA per year could also be lost.

7.272 LPAs will also have to set up and administer the new statutory pre-application service. However as most LPAs already provide some form of pre-application service; this will simply involve updating on-line forms and guidance notes. The Welsh Government will provide sample proformas for the process in national guidance which LPAs will be able to upload to their websites, the costs for which are set out in paragraph 7.282.

## Development Industry

7.273 Under this proposal the developer would gain from not having to pay a fee, this may increase participation in pre-application discussion, particularly when smaller, less profitable developments are proposed.

## **Benefits**

### Welsh Government

7.274 A statutory service would contribute towards facilitating and encouraging pre-application engagement between developers and LPAs.

### Local Planning Authority

7.275 If LPAs have a statutory pre-application service in place, it would enable them to influence development from an early stage in the process which could facilitate faster decision making. However the cost for this would not be recoverable.

### Development Industry

7.276 The developer would benefit from a more consistent approach to pre-application discussions and would save money in those cases where LPAs charge at the moment.

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<sup>22</sup> LPA survey data provided to the Welsh Government (April and June 2014)

7.277 Developers of smaller schemes might be more willing to engage in pre-application discussions if there is no fee to pay.

#### **Option 4 – Welsh Government to issue more prescriptive guidance on the provision of pre-application services and fees**

7.278 This option would require amendment of existing guidance<sup>23</sup> to provide more prescriptive advice on what the Welsh Government expects from pre-application services accompanied by dissemination through training events.

7.279 This option does not guarantee that LPAs and developers will follow the guidance. This will result in continued inconsistency between LPAs, again potentially leading to uncertainty, frustration, wasted time and cost.

#### **Costs**

##### Welsh Government

7.280 The Welsh Government would produce the updated guidance. The guidance would form part of a comprehensive guidance note for the Development Management system as a whole. The guidance note would include advice on procedures and the operation of pre-application services and the respective roles of the LPA and developer.

##### Local Planning Authorities

7.281 The cost to the LPA would depend on whether they follow the prescriptive guidance and change their current working practices. There would be no mandatory requirement for them to do so and as a consequence no additional costs. Discretionary powers to charge fees under section 93 of the Local Government Act 2003 would not be affected.

##### Development Industry

7.282 Any additional cost to the developer depends on the impact of the guidance. Developers that already follow best practice and request pre-application services from LPAs will have similar costs to those set out in option 1, as will developers that are influenced by the guidance and amend their working practices to seek pre-application advice from LPAs. Those developers that choose not to engage with LPAs will not incur costs.

#### **Benefits**

##### Welsh Government

7.283 Any positive impact in terms of supporting pre-application discussions is expected to be limited as pre-application discussions would remain discretionary.

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<sup>23</sup> [Realising the potential of pre-application discussions](#) (May 2012)

## Local Planning Authorities and Development Industry

7.284 Should the planning authority and developer follow the guidance, there may be some benefits in terms of consistency and certainty. However, if the guidance is not followed, the procedure will stay the same as in option 1.

### **Summary and Preferred Option**

7.285 Option 2 is preferred as it provides consistency and certainty to the developer and LPAs are able to recoup the costs associated with the statutory pre-application service.

7.286 Option 1, the current approach, generates inconsistency and uncertainty for developers.

7.287 Option 4, enhanced guidance, generates limited additional benefits compared with option 1.

7.288 Option 3 would have a significant negative financial impact where LPAs currently charge for pre-application services.

*Table 7.12: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Saving from legislation</b>	<b>Comments</b>
Development Industry	-	-£522	Per Inquiry

7.289 The summary of cumulative costs for the Bill are set out in Annex A

### Guidance

7.290 There will be a cost, through the production of appropriate guidance, explaining the proposals for the pre-application process. These costs are incorporated into the guidance for the development management section.

*Table 7.13: Total costs for the Pre-Application Section*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>One off Saving</b>
Development Industry	-	£36,700	-£522



## Welsh Minister decision making powers

### Developments of National Significance (Part 4, Section 17-19 & 24)

#### Options

7.291 Three options have been considered:

- Option 1- Do nothing, applications to continue to be submitted to local planning authorities (LPAs)
- Option 2 - Welsh Ministers to determine Developments of National Significance (DNS)
- Option 3 - Establish an independent consenting regime to determine Developments of National Significance (DNS)

#### Option 1 – Do Nothing

##### Description

7.292 Under this option there would be no changes to the current legislation.

7.293 Currently, planning applications are submitted to the relevant local planning authority, who should decide them within 8 weeks, or 16 weeks where an Environmental Impact Assessment is required. Applicants can appeal to Welsh Ministers (in practice, to their appointed representative the Planning Inspectorate) against a local planning authority's decision to refuse an application for planning permission or against non-determination if a decision is not made within the statutory timescale.

7.294 Welsh Ministers have powers to call in an application for determination, or recover jurisdiction for an appeal. Call-in cases and recovered appeals are processed by the Planning Inspectorate, with an Inspector making a report to the Welsh Minister. While there are no statutory targets within which the Welsh Ministers must issue a decision, officials aim to submit advice to the Minister within 12 weeks of receipt of the application form the Planning Inspectorate.

7.295 Evidence suggests that the existing consenting regime is not effective in terms of producing quality decisions in a timely manner<sup>24</sup> for planning applications for proposed infrastructure development. The report Evaluation of consenting performance of renewable energy schemes in Wales (January 2013), focussed particularly on development for renewable and low-carbon technologies, identifies a number of “constraining factors in the decision-making process”<sup>25</sup>. These include a lack of resources and technical expertise

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<sup>24</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 47](#)  
[Evaluation of Consenting Performance of Renewable Energy Schemes in Wales \(January 2013\) Page: iv-vi](#)

<sup>25</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81, para 7.3.25](#)

within LPAs, and the time taken by statutory consultees to respond and participate in the application process. The consequence is that infrastructure development is delayed, resulting in a negative impact on the economy and slow progress towards establishing a low-carbon economy through the building of renewable energy schemes.

## Cost

7.296 This option maintains the status quo and does not create additional costs. It is estimated that an average of 3.4 applications for infrastructure development per year in Wales will be affected by the proposals set out in this section of the Impact Assessment<sup>26</sup>. Therefore, the costs and benefits of each option will refer only to these applications.

### Welsh Government

7.297 Developers can submit appeals against local planning authority decisions to the Welsh Ministers (administered by their appointed representatives, the Planning Inspectorate). It is assumed that appeals arising from the 3.4 planning applications for infrastructure development will be determined using the local inquiry procedure. It costs around £14,500 to process and determine a local inquiry appeal<sup>27</sup>. It is estimated that there will be 0.5 appeals per year on average, which cost £7,250 to process and determine.

7.298 The Welsh Ministers also call in planning applications<sup>28</sup>. It is estimated that the Planning Inspectorate element of the call-in process costs £14,500 per case, and the Welsh Ministers element costs £9,500. It is estimated that 0.04 applications are called in on average per year, at a cost of £960.

7.299 The costs for the Welsh Government for applications that are called in are estimated to be £8,210 on average per year.

7.300 In measuring delays to the process, the current system enables developers of infrastructure schemes to use the planning system to secure planning permission for a proposed scheme primarily through the LPAs which represent the communities in which the development will be built. Balance in the planning system is maintained via the appeal process, which ensures that an impartial decision on the planning merits of a proposed scheme is given where a local authority refuses planning permission. However, delays in development caused by slow decision-making undermine Ministerial aims of encouraging economic recovery and building a sustainable and low-carbon economy.

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<sup>26</sup> [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#) pp15-16 - Data used excludes applications that were withdrawn or are on-going.

<sup>27</sup> The Planning Inspectorate can determine appeals using the Written Representations, Hearing, or Local Inquiry procedures. Appeals related to major development do not have to proceed via the Inquiry procedure, but the evidence gathered for [the ARUP Report 2014](#), confirms that they normally do.

<sup>28</sup> The circumstances required to trigger a call-in or recovery of an appeal are often set out in published criteria.

## Local Planning Authorities

- 7.301 LPAs receive and validate applications for planning permission, carry out consultations, and make decisions which are either delegated to a planning officer or made by a committee. It is this final element of the application process that influences the cost of the application.
- 7.302 The current system requires that developers pay a planning application fee in most cases when they submit an application to a local planning authority. It is estimated that the average fee for applications for proposed infrastructure development is £57,380<sup>29</sup>. It is estimated that the income generated from the payment of application fees for the 3.4 infrastructure planning applications is £195,000 on average per year.
- 7.303 It is assumed that the 3.4 applications are determined by Committee, rather than delegated to a planning officer. Existing figures and evidence for the cost of processing and deciding a planning application<sup>30</sup> is estimated to be too low<sup>31</sup>, given the level of involvement required by the local planning authority and inadequacy of available evidence. It is reasonable to assume that the cost of determining an application for major infrastructure reflects the cost of the associated fee. This is estimated to be an annual cost of £195,000 (£57,380 per application) to LPAs.
- 7.304 Some of these applications may be called in by Welsh Ministers. Of the 3.4 applications being considered, it is estimated that 0.04 are called in on average per year, and cost LPAs an extra £70 on average per year.
- 7.305 LPAs find it difficult to administer and determine infrastructure planning applications due to their relative scarcity. Authorities may not be able to develop and maintain appropriate expertise for this type of development, resulting in slow decision-making<sup>32</sup>. This impacts both on the reputation of the local planning authority and also increases costs due to decisions being appealed by developers.
- 7.306 It is estimated that 0.5 appeals are made after the 3.4 applications for planning permission have been determined by the local planning authority. It costs the local planning authority an average of £1,742 to participate in an

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<sup>29</sup> From data for [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#). It should be noted that the actual fees paid varied significantly.

<sup>30</sup> Planning Service Benchmarking Club 2011: Barchester City Council, PAS/CIPFA Report, February 2012, p12 (hereafter referred to as PAS/CIPFA Report 2012).

<sup>31</sup> This figure is estimated at £1,188. It is formed of an average of all types of planning applications. This includes householder development ranging to major developments. All DNS applications are likely to have a cost on the higher end of the spectrum, given their complexity and scale. This is not reflected in the figure.

<sup>32</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81](#)

appeal<sup>33</sup>. Therefore, it costs an average of £870 per year to participate in the appeal process.

7.307 Under this option it costs LPAs an estimated £196,000 on average per year to determine applications for infrastructure and participate in the call-in and appeal process. They also receive revenue from planning application fees, which is estimated to amount to £195,000 on average per year. The total cost to LPAs is £1,000.

### Development Industry

7.308 Developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Planning applications normally require the payment of a fee to a local planning authority.

7.309 Developer<sup>34</sup> costs vary according to the size of the development. It is estimated that the average cost of preparing an application is £128,709 and the total cost for making an application for infrastructure development is on average £186,089 per application (including fees). This includes developing the proposed scheme and putting it through the planning application process (including an average application fee for this type of development). Therefore, the cost of making 3.4 applications per year is estimated to be £632,703<sup>35</sup>.

7.310 Planning authorities are expected to decide planning applications within 8 or 16 weeks. However, evidence shows that applications (and appeals) for infrastructure development can take significantly longer than this. The average consenting time for applications for renewable energy schemes over 5MW between 2005 and 2012 was 57 weeks. For appeals, the average was 36 weeks<sup>36</sup>. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. See 'cost of delays to the development industry' in section 7.4.

7.311 Some planning applications are called in by Welsh Ministers, due to the significance and/or impact of the proposed scheme. An application can be called in at any point during the application process. Once called in it is processed by the Planning Inspectorate which provides a report to the Minister. Welsh Ministers subsequently then issue their decision<sup>37</sup>. Of the 3.4 applications being considered, it is estimated that 0.04 are called in on average per year, and cost developers an extra £192 on average per year.

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<sup>33</sup> Planning Service benchmarking club 2011 - Barchester city council 2012, p13.

<sup>34</sup> "Developer" means a person or organisation wishing to develop land (in this case specifically with infrastructure development).

<sup>35</sup> [Benchmarking the costs to applicants of submitting a planning application \(July 2009\)](#) Page: 21 (hereafter referred to as ARUP Report 2009). This also includes application fee data from ARUP Report 2014.

<sup>36</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\)](#) Page: 54-55.

<sup>37</sup> It should be noted that the Welsh Minister can issue a decision which is not in accordance with the decision recommended by the Inspector.

7.312 When a local planning authority refuses planning permission, or grants it with conditions, or fails to issue a decision within the statutory timescale, the developer can submit an appeal to Welsh Ministers. It is estimated that there are 0.5 planning appeals per year that result from the 3.4 planning applications. It is assumed that, due to the complexity of planning merits involved, these appeals will follow the local inquiry procedure. This is estimated to cost developers £4,800 per appeal<sup>38</sup>. Therefore, the cost for developers of making 0.5 appeals is estimated to be £2,400 on average per year.

7.313 The total cost for developers is estimated to be £635,300 on average per year.

### The Community

7.314 The community and interested parties are able to review and comment on proposed schemes submitted to their local planning authority. They have a similar opportunity to make their views known when an appeal is submitted. There is a time cost to interested parties and the general public in participating in the planning process, but the ability of interested parties/the general public to participate is unchanged in each of the options.

## **Benefits**

### Welsh Government

7.315 The current system provides Welsh Government with the benefit of controlling development in Wales, ensuring that decisions are made at the appropriate level and involve the communities affected by proposed infrastructure schemes. They also provide an important appeal function.

### Local Planning Authorities

7.316 LPAs are able to control and influence development within their area through the planning system, ensuring that it is appropriate and that communities are able to have their say in the consideration of an application. LPAs receive a fee to enable them to carry out this function.

### Development Industry

7.317 Under this option if developers gain consent to develop land, this increases the value of the land on which development is planned. Developers are also able to challenge decisions that refuse permission, impose conditions, or where a decision is not made. This provides the benefit of being able to receive an independent and fair reconsideration of the merits of a case.

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<sup>38</sup> [Improving the Appeal Process in the Planning System – making it proportionate, customer focused, efficient and well resourced](#) ( May 2007) Page: 44 (hereafter referred to as *Planning Reform Consultation 2007*).

## The community

7.318 Currently the community and interested parties have an opportunity to make their views known on development which is intended to be built in their communities. They are able to participate in the planning process and influence consideration of the planning merits of a proposed scheme.

## **Option 2 – Welsh Ministers to determine developments of national significance (DNS)**

### **Description**

7.319 This option implements an IAG recommendation in introducing a new application procedure for DNS. It would provide a system with improved certainty and rigour in the application process, and allow for more timely decisions<sup>39</sup>.

7.320 An application for planning permission will become a DNS application if it falls within thresholds to be set out in secondary legislation. Examples of what these thresholds might be were included in the consultation<sup>40</sup>. The proposed NDF will also identify development which would be classified as DNS. For purposes of clarity, only planning applications which fall within the indicative thresholds identified in the positive planning consultation are used in assessing the impact of this proposal<sup>41</sup>.

7.321 Under this option DNS applications would be determined by Welsh Ministers.

### **Cost**

7.322 This option provides a new route for the consideration of applications for planning permission for infrastructure projects. This will generate new or changed costs, including the fee to be paid for DNS applications, and the cost of new casework by Welsh Ministers.

## Welsh Government

7.323 Welsh Ministers (and their appointed representative, the Planning Inspectorate) will be subject to new costs. DNS applications will be made to Welsh Ministers for determination. The appointed representative of the Welsh Ministers will process the application and present a report to Welsh Ministers. Welsh Ministers will make a decision on the application following consideration of the report. It is assumed that the Planning Inspectorate will be the appointed representative to carry out this work. Therefore, for the

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<sup>39</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\), pp 46-49](#)

<sup>40</sup> [Draft Planning \(Wales\) Bill and Positive planning: proposals to reform the planning system in Wales \(December 2013\)](#) Annex B.

<sup>41</sup> Connected applications, for example Listed Building applications, are not included in the data used in this assessment. NDF designation has not been estimated to prevent pre-empting the content of the proposed NDF.

purposes of this assessment, the cost of processing and providing a report for Welsh Ministers will be based on the work being carried out by the Planning Inspectorate.

- 7.324 In order to process the 3.4 applications expected to be made on average per year, it is estimated that the Planning Inspectorate would require 1.3 Inspectors and 3.9 administrators<sup>42</sup>. This is estimated to generate an annual resource requirement of £395,163<sup>43</sup>.
- 7.325 There will be set-up costs of £5,850<sup>44</sup>, consisting of the cost of providing furniture and workstations. There will also be the cost of recruiting additional members of staff. This is estimated to be £12,300. It is estimated that these one-off set-up costs would amount to £18,150.
- 7.326 After a report on the application has been prepared by an Inspector, Welsh Ministers review the evidence and issue a decision. It is estimated that this will require resources of 1.2 administrative and Legal staff<sup>45</sup>, at an estimated cost of £44,600 per year.
- 7.327 Developers will pay an application fee for their DNS application. The fee that will be paid will be defined at a later point, following consultation, in secondary legislation. For illustrative purposes, it is assumed that the fee paid to Welsh Ministers (or their appointed representative, the Planning Inspectorate) will be the same as that identified in option 3, which is £105,400. Therefore, the total estimated income from DNS application fees is £358,300 on average per year.
- 7.328 The total cost to Welsh Government is estimated to be £81,563 on average per year, with one-off set-up costs of £18,150.

### Local Planning Authorities

- 7.329 For LPAs this option will generate new work resulting from engaging with the DNS application process. It is possible to provide an illustrative cost based on the assumption that the effort, and therefore cost, required to participate in the DNS application process will be broadly equivalent to that of participating in the appeal process. This is estimated to cost £1,742 on average per appeal. Therefore, it is estimated that it will cost LPAs £5,922 to engage with the process for 3.4 DNS applications on average per year.
- 7.330 Developers will be required to pay a fee to LPAs for the DNS application work they are required to carry out. For illustrative purposes it is assumed that this

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<sup>42</sup> The administrative grades are: 0.2 Senior Executive Officer, 0.7 Higher Executive Officer, 2.6 Executive Officers, and 0.4 Administrative Assistants.

<sup>43</sup> This includes salary costs and on-going costs such as IT and accommodation.

<sup>44</sup> It is assumed that these costs will be lower than those of the IPC or the theoretical DNS Independent Body because the new work would be carried out within an existing organisation. There would be no costs associated with starting completely from scratch.

<sup>45</sup> The administrative grades are: 0.03 Grade 7, 1.00 Higher Executive Officers, and 0.08 Executive Officer.

fee will be equivalent to the estimated cost of carrying out the work, which is £1,742 per application. Therefore, LPAs will receive an estimated income of £5,922 on average per year for the DNS application work. This means that, in effect, the new DNS application function that LPAs will have will be cost neutral.

- 7.331 The costs and income identified in option 1 for LPAs will be completely removed as these applications, and the application fee, will go to the Welsh Ministers.

#### Development Industry

- 7.332 Developers seeking planning permission for infrastructure development which is identified as DNS will submit their applications to the DNS Independent Body rather than to their local authority. The cost of preparing the scheme and using the application process will remain the same, at £128,709, apart from the fees that they will have to pay.

- 7.333 The developer will be required to pay a fee to the DNS Independent Body and to the local planning authority. For illustrative purposes, it is possible to use the current fee charged by the Planning Inspectorate for a Nationally Significant Infrastructure Project determined by one Inspector, and adapt this to the DNS application process, leading to a fee of £105,400 per application. However; the DNS fee will be defined, following consultation, in secondary legislation at a later point.

- 7.334 Developers will also be required to pay a fee to the relevant local planning authority to cover the costs of their involvement in the DNS application process. For illustrative purposes, it is assumed that the average cost of this involvement will be equivalent to the local planning authority's cost of engagement with the appeal process. This is estimated to be £1742 on average per case.

- 7.335 Therefore, the average cost of preparing and making a DNS application is estimated to be £235,851 per application. With an estimated 3.4 applications being made per year, the average annual cost of option 2 for developers is estimated to be £801,893.

#### The Community

- 7.336 The role of the community and interested parties in the new development management system defined will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new costs for interested parties and the general public.



## **Benefits**

### Welsh Government

7.337 The main benefits for Welsh Government result from the achievement of policy objectives and the retention of accountability for infrastructure development in Wales. By creating DNS applications, Welsh Ministers will be able to speed up the planning process for infrastructure projects (largely expected to be renewable energy schemes). This will contribute to Ministerial aims of encouraging economy growth and to achieving low carbon and sustainable energy aspirations.

7.338 Ministers also ensure that they retain active management of development in Wales by not delegating the decision to an Independent Body.

### Local Planning Authorities

7.339 As with developers, the benefits for local authorities are the same as those defined in option 3. These benefits consist of cost savings arising from fewer applications and appeals, and fees received for work related to DNS applications.

### Development Industry

7.340 The benefits are the same as those for option 3 for developers. Namely, developers can expect to receive a quicker decision on applications for infrastructure development which is classified as a DNS application.

### The Community

7.341 The role of the community and interested parties in the new DNS management system will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new benefits for interested parties and the general public.

## **Option 3 – Establish an independent consenting regime to determine developments of national significance (DNS)**

### **Description**

7.342 The report entitled Evaluation of consenting performance of renewable energy schemes in Wales (January 2013) recommends that these types of application should be determined by an independent body<sup>46</sup>. This body would sit alongside current consenting bodies (local authorities, the Planning Inspectorate, and Welsh Ministers) and be responsible for ensuring DNS applications are determined within acceptable timescales by appropriately experienced decision makers.

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<sup>46</sup> [Evaluation of consenting performance of renewable energy schemes in Wales 2013, Recommendation 1, p vi](#)

## **Cost**

7.343 This option provides a new route for the consideration of requests for planning permission for infrastructure projects. This will generate new costs, including one-off set-up costs for a new independent body to consider applications for DNS.

### Welsh Government

7.344 Welsh Government (and their appointed representative, the Planning Inspectorate) will not have any new functions in the new development management system. They will not have a role in the DNS application process. Further to this, developers will not be able to appeal to the Planning Inspectorate following a decision by the DNS Independent Body. Therefore, there are no costs for appeals or call-ins.

7.345 The current cost to the Welsh Government is estimated to be £8,210 on average per year. This amount will be saved as a result of this option.

### Local Planning Authorities

7.346 It is estimated that this option will be cost neutral for LPAs as the cost of the new DNS application work will be met by the fee paid by the developer. It should be noted that LPAs will not receive the applications fees that they currently receive (as defined in option 1).

### Development Industry

7.347 It is estimated that the cost of option 3 for developers is £801,893 on average per year. This is because altering who a DNS application is made to does not result in changed costs for the developer making the application, as the process and associated

7.348 Developers will not be able to take their DNS application to appeal<sup>47</sup>. Therefore, there are no further costs associated with these types of application.

### The community

7.349 The role of the community and interested parties in the new development management system defined in this option will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new costs for interested parties and the general public.

### DNS Independent Body

7.350 This option adds a new cost to the development management system in the form of a new type of application, DNS applications, being determined by a

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<sup>47</sup> Parties can resort to the High Court if they consider the decision to be unlawful.

new Independent Body. This will create new annual costs, as well as one-off set-up costs for Welsh Government.

- 7.351 The closest equivalent to such an Independent Body was the Infrastructure Planning Commission (“IPC”). The costs and resources associated with the set up and running of the IPC can be used, and appropriately amended to the DNS process, as a basis for establishing the structure, resources, and costs of the DNS Independent Body<sup>48</sup>.
- 7.352 The DNS Independent Body resources are expected to consist of 1 Chief Executive, 1 Chair, 1.3 Commissioners, and 5.5 Administrators<sup>49</sup>. This is estimated to generate an annual resources requirement of £787,200 per year. Added to this will be on-going accommodation (£85,512) and contingency costs (£87,271)<sup>50</sup> which are estimated to be £172,783 per year. The total running costs of the DNS Independent Body are estimated to be £959,983 on average per year.
- 7.353 There will also be one-off set-up costs associated with setting up the new Independent Body. IT equipment will need to be provided, as well as an office and office furniture. It is assumed that a ‘flexible desking’ approach will be used with a ratio of 8 desks to 10 people. Based on a total of 8.8 staff, it is estimated that the IT and furniture set-up costs will be £22,176. Added to these costs will be further one-off costs, including recruitment, advertising, office space, etc, which are estimated to be £480,000. The total set-up costs are estimated to be £502,176.
- 7.354 The DNS Independent Body will receive an application fee from developers for DNS applications made to them. It is estimated that this fee will be £105,400 per application. This will result in an estimated income of £358,309 on average per year for 3.4 applications.
- 7.355 The cost of running the DNS Independent Body is estimated to be £601,674 on average per year. Added to this is the one-off set-up costs associated with creating the Independent Body. These are estimated to be £502,176.

## **Benefits**

### Welsh Government

- 7.356 Providing a new application route for proposed infrastructure development contributes to Ministerial aims and objectives. DNS applications would be determined more quickly thereby encouraging economic growth and the development of a low-carbon economy.

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<sup>48</sup> [The Localism Bill –Impact Assessment, DCLG November 2007](#), Part A, sets out the estimated set-up and on-going costs and resources expected to be required by the IPC to achieve their function as an independent consenting body.

<sup>49</sup> Administrator grades are: 0.3 Grade 5, 1 Grade 7, 0.5 Senior Executive Officer, 0.7 Higher Executive Officer, 2.6 Executive Officers, and 0.4 Administrative Officer.

<sup>50</sup> 10% Contingency costs include travel and subsistence, auditing, etc.

7.357 The benefit to the Planning Inspectorate is that they will receive fewer appeals and called-in applications to consider each year. Resources that would normally be dedicated to this casework can be redirected to other work. There would be a similar release of Welsh Government resources.

7.358 More resources would be dedicated to determining applications and appeals in general. This contributes to Ministerial aims of improving the efficiency of the planning system. In doing so, it will also contribute to the aims of encouraging economic growth and a sustainable economy.

#### Local Planning Authorities

7.359 This option provides LPAs with the ability to focus their resources on more frequent and regular casework by removing the irregular but complex infrastructure casework. Infrastructure applications require specialist knowledge which LPAs may not be able to develop and retain due to the low volume of these applications. Therefore, creating a different application route for some infrastructure schemes will enable LPAs to dedicate more resources to more regular applications for planning permission.

7.360 LPAs will also retain a role within the DNS application process. This will enable them to ensure their views on the merits of the application are taken into account by the decision-makers. The LPAs will receive a fee for this new work. They will be able to dedicate appropriate resources to their role in the DNS application process without reducing resources for other application casework.

#### Development Industry

7.361 The principal benefit for developers is that, for proposed infrastructure development that falls above the DNS thresholds they will receive timelier decisions. It is estimated that the average time for a renewable energy application to receive a decision is 57 weeks; any subsequent appeal decision takes on average 36 weeks to receive a decision<sup>51</sup>. A DNS application would be decided by the DNS Independent Body within 36 weeks. This means that developers will have a decision on their proposed development much more quickly; saving between 21 and 57 weeks on average. Receipt of planning permission will add value to the land on which the proposed development could be built; refusal of permission would enable the developer to put their resources into schemes which have greater potential to receive planning permission.

#### The Community

7.362 The role of the community and interested parties in the new development management system will remain unaltered from their role in the current system in option 1. Therefore, there will be no new benefits for interested parties and the general public.

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<sup>51</sup> [Evaluation of consenting performance of renewable energy schemes in Wales 2013, p54-55i](#)

## DNS Independent Body

7.363 This would bring the DNS Independent Body into existence and provide it with the authority to determine applications for infrastructure development. This would give it an influential role in Ministerial objectives of encouraging economic growth and building a sustainable economy. The Independent Body would receive a fee for this work which, whilst not enabling full cost-recovery, would provide an important source of income.

### **Summary and Preferred Option**

7.364 Under option 1 developers seeking to bring forward infrastructure development face delays in obtaining a decision from the relevant local planning authority and, where necessary, through making an appeal to the Planning Inspectorate.

7.365 Welsh Ministers propose that these barriers can be overcome by introducing a new type of development, called Development of National Significance, which is decided by a body or person other than LPAs. While limited in number, these applications are likely to be technically complex and may be controversial locally. Option 3 proposes that an Independent Body is responsible for determining DNS applications. This is not the preferred option because the cost of setting up and running a new organisation for a relatively small number of applications. Added to this is the fact that this solution would reduce democratic accountability for planning decisions.

7.366 The preferred option; option 2, proposes that DNS applications should be determined by Welsh Ministers. This ensures that decisions on Developments of National Significance are made by democratically accountable Ministers, promoting growth and a sustainable low carbon economy. Set up costs are minimal relative to those involved in setting up a new Independent Body. The running costs will also be proportionate as the resources required to carry out the work will relate entirely to those needed to process and determine the applications. Option 2 is the preferred option.

*Table 7.14: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Welsh Government	£8,210	£75,253	Annual Cost
Local Planning Authorities	£1,000	-	Annual Cost
Development Industry	£635,300	£166,593	Annual Cost

7.367 The summary of cumulative costs for the Bill are set out in Annex A

## **Optional Direct Applications**

### **(Part 4, Section 20 – 25)**

#### **Options**

7.368 Three options have been considered:

- Option 1 - Do nothing
- Option 2 - Where a local planning authority is designated as poor performing, applicants can choose to submit their application for major development to the Welsh Ministers for determination
- Option 3 - Where a local planning authority is designated as poor performing, applicants can choose to submit applications for minor and major development to Welsh Ministers for determination

#### **Introduction**

7.369 There is some uncertainty at this stage about how many (if any) LPAs will be designated as poorly performing and the identity of those authorities. As such, for the purposes of this element of the Impact Assessment, the costs and benefits of making planning applications to an 'average local planning authority', and any subsequent appeals, will be used to illustrate the differences between each option. The 'average local planning authority, is based upon the average taken from casework and financial data from all Welsh LPAs. The principle reason for adopting this approach is that the designation criteria that would underpin options 2 and 3 have not been established yet. Equally, applicant behaviour cannot be predicted accurately.

#### **Option 1 – Do Nothing**

##### **Description**

7.370 Under this option there would be no changes to the current legislation.

7.371 Currently, planning applications are submitted to the relevant local planning authority, who should grant or refuse planning permission for the application within 8 weeks, or 16 weeks if an Environmental Impact Assessment is required.

7.372 If the local planning authority does not decide an application within the statutory timescales, the applicant can either do nothing and wait for a decision to be made, agree with the local planning authority to extend the determination period, or they can appeal to the Welsh Ministers (in practice, to their appointed representative the Planning Inspectorate) against non-determination.

7.373 Poor performance by a local planning authority can consist of delays in decision-making or poor quality decision-making. In some cases, this poor performance can lead to a successful claim for costs against the local planning authority related to an appeal, or investigated by the public service ombudsman, which could also award costs against the LPA. Other than this,

there are no consequences related to poor performance that would encourage a local planning authority to improve.

## **Cost**

7.374 This option maintains the status quo and does not create additional costs.

### Welsh Government

7.375 Developers can submit appeals against local planning authority decisions to Welsh Ministers. Appeals are processed using different procedures that reflect the complexity and interest in the case. These procedures are written representations, hearing, and local inquiry, and are used to determine both minor and major applications. It is estimated that, for appeals against decisions by the average local authority, 26.3 appeals will follow the written representations procedure, 6.3 the hearing procedure, and 2.1 the local inquiry procedure.

7.376 Each procedure costs a different amount to process and determine. On average, written representations cost £1,582 per appeal, hearings cost £5,096, and local inquiries cost £14,517. The total cost of determining 34.7 appeals is therefore estimated to be £104,198 on average per year.

7.377 The total average cost of option 1 for the Welsh Government is estimated to be £104,198 per year. [This is an existing cost that is currently being incurred by the Welsh Government.]

### Local Planning Authorities

#### *Applications*

7.378 LPAs receive and validate applications for planning permission, carry out consultations, and make decisions which are either delegated to a planning officer or made by a Committee. For the purposes of this element of the Impact Assessment, it is assumed that applications for minor development receive a Delegated decision, and applications for major development receive a Committee decision. This split reflects the general assumption that applications for major development are likely to be more complex and have a greater impact on the community.

7.379 It is estimated that on average the cost of processing an application, where it is determined by a planning officer under the authority's adopted scheme of delegation, is £562 per application, and is £1,259 per application where it is determined by the planning committee<sup>52</sup>. The cost to the average local planning authority of making 879 delegated decisions and 25 committee decisions is therefore estimated on average to be £525,473 per year.

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<sup>52</sup> Costs per case, either Delegated or Committee, are derived from the Planning Service benchmarking club 2011 - Barchester city council 2012, pp10-12

7.380 Developers pay an application fee to the local planning authority when they submit a planning application. The average fee for an application for minor development is £248, and for an application for major development is £11,982<sup>53</sup>. The annual revenue received by the average local planning authority is estimated to be £517,542.

### *Appeals*

7.381 It is estimated that 34.7 appeals are made by developers following planning applications to the average local planning authority. It costs the local planning authority £1,742 on average to participate in an appeal<sup>54</sup>. Therefore, it costs £60,447 on average per year to participate in the appeals process.

7.382 Under option 1, it therefore costs the average local planning authority an estimated £585,920 per year to determine planning applications and participate in the appeal process. It also receives revenue from planning application fees, which is estimated to amount to £517,542 on average per year.

### Development Industry

#### *Applications*

7.383 Developers<sup>55</sup> bear the cost of preparing their proposed scheme and then using the planning system to obtain planning permission. Planning applications normally require the payment of a fee to the local planning authority.

7.384 Developer costs vary according to the type of development proposed. The average cost of making an application for minor development is estimated to be £8,804, with an estimated average cost of £65,018<sup>56</sup> for an application for major development<sup>57</sup>. A total of 904 planning applications are made on average per year to the average local planning authority. Minor development accounts for 879 applications and 25 are for major development<sup>58</sup>. Therefore, the average total cost to developers for preparing and making planning applications is estimated to be £9,364,166 per year.

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<sup>53</sup> Average fees derived from [The Town and Country Planning \(Fees for Applications and Deemed Applications\) Regulations 1989 \(as amended\)](#).

<sup>54</sup> PAS Benchmarking Report 2012, p13.

<sup>55</sup> "Developer" means any person or business wishing to develop land (eg adding an extension to a dwelling through to housing development of more than 100 houses) who make applications to the average local planning authority..

<sup>56</sup> Arup Report 2009, Appendix E, p60. The average costs are a combination of the cost of preparing and submitting the application, and includes an average application fee. For minor applications the fee is estimated to be £289 on average, and for major applications it is estimated to be £11,982 on average. Fee data provided by Welsh Government.

<sup>57</sup> [The Town and Country Planning \(Development Management Procedure\) \(Wales\) Order 2012 \(SI 2012/801\), art. 2\(1\)](#).

<sup>58</sup> Data derived from Welsh Government statistics.



## *Appeals*

- 7.385 When a local planning authority refuses to grant planning permission, or grants it with conditions, or fails to issue a decision within the statutory timescale, the developer can submit an appeal to Welsh Ministers (or their appointed representative). A total of 34.7 appeals are made per authority per year on average, of which 31 are for minor development and 4 are for major development.
- 7.386 Each appeal will follow either the written representations, hearing, or local inquiry procedures depending on the complexity of the case<sup>59</sup>. Each procedure carries a different cost for developers – on average the written representations procedure costs £600 per appeal, with the hearings procedure costing £1,200 per appeal, and the local inquiry procedure costing £4,800<sup>60</sup> per appeal. The average cost of making the 35 appeals is therefore estimated to be £33,420 per year.
- 7.387 When combining both costs, the total average cost of option 1 per year for developers is estimated to be £9,397,586.
- 7.388 Developers also have to bear the cost of the timeliness and quality of decisions issued by LPAs. The majority of applications should be decided by the local authority within 8 weeks<sup>61</sup>, and any extra time taken will result in delay to development and the costs associated with this. For the average local authority, it is estimated that 71% of the minor applications submitted are decided within 8 weeks. However, only 17% of major applications are determined within 8 weeks. Further to this, of the 34.7 appeals submitted to the Planning Inspectorate, 34% of the appeals for minor development and 41% of the appeals for major development were allowed. The estimated cost of delay of development is identified in the section 'cost of delay to the development industry' in section 7.4.

## The Community

- 7.389 The community and interested parties are able to review and comment on proposed schemes submitted to their local planning authority. They have a similar opportunity to make their views known when an appeal is submitted. There is a time cost to interested parties and the general public in participating in the planning process, but their ability to participate is unchanged in each of the options.

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<sup>59</sup> The type of development, minor or major, is not a consistent indicator of the complexity of an appeal. An average of 26.4 are written representations, 6.3 are hearings, and 2.1 are local inquiries.

<sup>60</sup> These are average costs per appeal, as the actual costs can vary according to the particular circumstances of the appeal.

<sup>61</sup> If the development requires an environmental impact assessment, the determination period is 16 weeks. However, for the purposes of this Impact Assessment, the more basic factor of decisions issued within 8 weeks will be used.

## Benefits

### Welsh Government

7.390 The current system provides the Welsh Government with a mechanism of controlling development in Wales, ensuring that decisions are made at a local level and involve the communities affected by proposed infrastructure schemes. It also provides an important appeal function, through the Planning Inspectorate Wales.

### Local Planning Authorities

7.391 LPAs are able to control and influence development within their area through the planning system, ensuring that it is appropriate and that communities are able to have their say in the consideration of an application. LPAs receive a fee for most applications to enable them to carry out this function.

### Development Industry

7.392 Under option 1 developers benefit from the receipt of planning permission if appropriate. Gaining consent to develop increases the value of the land on which development is planned.

7.393 Developers are also able to challenge the local planning authority's decision to refuse permission, impose conditions, or not to determine the application within the statutory time period. This challenge is made in the form of an appeal to the Welsh Ministers, which provides the benefit of being able to have the merits of the case re-considered fairly by an independent party.

### The Community

7.394 Option 1 provides the community and interested parties with the opportunity to make their views known on development which is intended to be built in their communities. They are able to participate in the planning process and influence consideration of the planning merits of a proposed scheme.

**Option 2 – Where a local planning authority is designated as poor performing, applicants can choose to submit their application for major development to the Welsh Ministers for determination**

### **Description**

7.395 This option takes a focussed approach to the consequences of designating LPAs. It is estimated that LPAs determine only 17% of applications for major development within 8 weeks. Therefore, it is proposed that developers will only have the option of submitting applications for major development to the Welsh Ministers (or their appointed representative) when a local authority is designated due to their poor performance.

## Cost

7.396 This option will generate new costs for LPAs and the Welsh Ministers. In assessing the cost associated with this option, it is not possible to accurately estimate how developers will react to the ability to make planning applications direct to Welsh Ministers. Therefore, it is assumed that 50% of planning applications for major development will be made to Welsh Ministers and 50% to LPAs. It is also assumed this will have an impact on the number of appeals submitted.

### Welsh Government

#### *Applications*

7.397 Option 2 enables developers to submit applications for major development directly to the Welsh Ministers. It is anticipated that the Planning Inspectorate will be appointed by the Welsh Ministers' to process applications and their costs will be used to illustrate the impact of option 2.

7.398 Processing and determining planning applications will be new casework that will need to draw upon existing and new resources. In order to process 12.5 applications for major development it is estimated that the Planning Inspectorate would require 0.3 Inspectors and 2.9 administrative staff<sup>62</sup>. This is estimated to generate an annual resource requirement of £237,770.

7.399 There will be one-off set-up costs with this new resource, consisting of recruiting staff and providing IT and office furniture. These are estimated to be £17,214

7.400 Developers will pay a fee for applications made to the Welsh Ministers. This fee is assumed to be the same as that required by LPAs, and set out in subordinate legislation. The average income from application fees is estimated to be £149,775 per year.

#### *Appeals*

7.401 Developers will also continue to submit appeals to Welsh Ministers on the applications they continue to make to the local planning authority. It is estimated that 33 appeals will be submitted on average per year, with an estimated average cost of £96,380 to process and determine.

7.402 In summary, the total cost of processing and determining planning applications and appeals is estimated to be £334,150 per year, with a one-off set up cost of £17,214. The revenue received from application fees is estimated to be £149,775 per year.

7.403 The total average cost of option 2 for the Welsh Government (excluding one-off set-up costs) is estimated to be £184,375 per year – [£96,380 of which is

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<sup>62</sup> The administrative staff are: 0.4 senior planner, 1.5 planners, 1 Administrative Assistant.

an existing cost incurred by the Welsh Government, to continue to process and determine appeals submitted to the Welsh Ministers, and £87,995 of which is a new cost incurred as a direct result of the proposal].

### Local Planning Authorities

7.404 Under option 2 LPAs have new costs associated with applications being made direct to the Welsh Ministers.

#### *Applications*

7.405 It is assumed that option 2 will reduce the number of planning applications for major development made to the average local planning authority by 50%. It is estimated, therefore, that 12.5 applications for major development will be decided on average per year. The number of minor applications determined by the average local authority will be the same as that identified in option 1. Therefore, the average cost of determining applications for planning permission is estimated to be £509,736 per year.

7.406 Developers will continue to pay a fee to the local planning authority for applications submitted to them. This will result in the average local planning authority receiving revenue of £367,767 on average per year.

7.407 LPAs will also be required to participate in the application process for the 12.5 planning applications for major development made to the Welsh Ministers. The cost of this work is assumed to be the same as engaging in the appeal process. Therefore, the cost to the average local authority's participation in the process for applications made to the Welsh Ministers is estimated to be on average £21,775 per year.

#### *Appeals*

7.408 LPAs will continue to participate in appeals that are submitted as a result of the determination (or non-determination) of planning applications by them. It is estimated that there will be 33 appeals decided on average per year. This is estimated to cost the average local planning authority £57,486.

7.409 In summary, it will cost the average local planning authority an estimated £567,222 per year to determine planning applications and participate in the appeal process. It will also receive revenue from the planning application fees, which is estimated to be on average £367,767 per year. However, there is a new cost associated with participating in the process for applications made direct to the Welsh Ministers, which is estimated to be £21,775 per year.

7.410 Therefore, the estimated cost of option 2 for the average poor performing local planning authority is £221,230 on average per year – [£199,455 of which is an existing cost that LPAs currently incur, when continuing to determine planning applications and to participate in the appeal process; and £21,775 of which is a new cost incurred as a direct result of the proposal].

## Development Industry

### *Applications*

7.411 The cost of making a planning application to the Welsh Ministers will be the same as making an application to a local planning authority. As identified in option 1, the total average cost for developers is estimated to be £9,364,166 per year.

### *Appeals*

7.412 Under option 2 it is estimated that 50% of planning applications for major development will be made to the Welsh Ministers and, therefore, will not have a subsequent right of appeal. The number of appeals made per year on average is estimated to be 33<sup>63</sup>. This is estimated to cost £30,960 on average per year.

7.413 The total average cost of option 2 for all developers is estimated to be £9,395,126 per year. In comparison with option 1 (do nothing), this could result in an estimated average cost saving of £2,460 per year.

## The Community

7.414 The role of the community and interested parties in option 2 will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new costs for interested parties and the general public under option 2.

## **Benefits**

### Welsh Government

7.415 For the Welsh Ministers, option 2 demonstrates determination to tackle poor performance by LPAs. They will benefit from the positive impact that designation, or the threat of designation, is expected to have on local planning authority performance. This is expected to improve so that designation is avoided, further contributing to efforts to improve the planning system and economic recovery.

7.416 Option 2 restricts the types of application that can be made to the Welsh Ministers to only those for major development. This is an appropriate and proportionate approach as it ensures that the Welsh Ministers are able to engage with and focus on applications for development which is expected to have a significant impact on efforts to encourage economic growth. It ensures that the cost and resources required to carry out the work are proportionate.

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<sup>63</sup> This is a reduction of 1.8 appeals from the estimated total annual number identified in *Option 1*.

### Local Planning Authorities

- 7.417 Option 2 will encourage LPAs to improve their performance in processing and determining planning applications. The potential drop in income through reduced fees and the impact on their reputation should result in greater effort being put into ensuring decision timescales are met and that decisions are of good quality.
- 7.418 By restricting the types of application only to major development, option 2 ensures that LPAs continue to receive applications for minor development which they can process and determine in good time. They will have sufficient casework to be able to function effectively and provide evidence of improving the areas which led them to being designated as poor performing.

### Development Industry

- 7.419 Developers will benefit from applications being determined within the expected timescale of 8 weeks. It is also anticipated that the quality of decisions will increase. The streamlining of the planning system will provide developers with the opportunity to progress with their proposed schemes more quickly, or to amend or stop them if they do not receive permission to develop. The change in decision times and quality is likely to extend to all applications as it is anticipated that the beneficial impact of this proposal will be an improvement in local planning authority performance in general.

### The Community

- 7.420 The role of the community and the general public in option 2 will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new benefits for interested parties and the general public under option 2.

### **Option 3 – Where a local planning authority is designated as poor performing, applicants can choose to submit applications for minor and major development to Welsh Ministers for determination**

#### **Description**

- 7.421 Where exceptionally, a local authority falls below Ministerial criteria they will be designated as poor performing. When this designation is made, developers will have the option to submit their planning application to the Welsh Ministers instead of the local planning authority, Welsh Ministers, or their appointed representative, will determine applications for planning permission, with no subsequent option for the developer to submit an appeal. Where appropriate, applicants may seek Judicial Review of a decision.

## Cost

7.422 In summary, this option will generate new costs for LPAs and Welsh Ministers.

7.423 In assessing the cost associated with this option, it is not possible to accurately estimate how developers will react to the ability to make planning applications direct to Welsh Ministers. Therefore, it is assumed that 50% of planning applications will be made to Welsh Ministers and 50% to LPAs. It is also assumed that this will have an impact on the number of appeals submitted.

### Welsh Government

7.424 Option 3 enables developers to submit applications for minor and major development directly to Welsh Ministers, or their appointed representative. It is anticipated that the Planning Inspectorate will be the Welsh Ministers' appointed representative and their costs will be used to illustrate the impact of option 3.

### *Applications*

7.425 Processing and determining planning applications will be new casework that will need to draw upon existing and new resources. In order to process 439.5 applications for minor development and 12.5 applications for major development, it is estimated that the Planning Inspectorate would require 5.6 Inspectors and 8 administrative staff<sup>64</sup>. This is estimated to generate an annual resource requirement of £1,127,233<sup>65</sup>.

7.426 There will be one-off set-up costs associated with this new resource, consisting of recruiting staff and providing IT and office furniture. These are estimated to be £57,972.

7.427 Developers will pay a fee for applications made to the Welsh Ministers. This fee is assumed to be the same as that required by LPAs, and set out in legislation. The average income per average poorly performing authority from application fees is estimated to be £258,771 per year.

### *Appeals*

7.428 Developers will also continue to submit appeals to the Welsh Ministers on the applications they make to the local planning authority. It is estimated that 17.5 appeals will be submitted on average per year, with an estimated average cost of £52,432 to process and determine.

7.429 In summary, the total cost of processing and determining planning applications and appeals is estimated to be £920,894 per year, with a one-off

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<sup>64</sup> The administrative staff are: 1 Senior Executive Officer, 1.1 senior planners, 4.2 planners, 2.7 Administrative Assistants.

<sup>65</sup> This includes salary costs and on-going costs such as IT and accommodation

set-up cost of £57,972. The revenue received from application fees is estimated to be £258,771 per year.

- 7.430 The total average cost of option 3 for the Welsh Government (excluding one-off set-up costs) is estimated to be £920,894 per year – [£52,432 of which is an existing cost incurred by the Welsh Government, to continue to process and determine appeals submitted to the Welsh Ministers, and £868,462 of which is a new cost incurred as a direct result of the proposal.]

#### Local Planning Authorities

- 7.431 Under option 3 LPAs have new costs associated with applications being made direct to the Welsh Ministers.

#### *Applications*

- 7.432 It is assumed that option 3 will reduce the number of planning applications made to the average local planning authority by 50%. It is estimated, therefore, that 439.5 applications for minor development and 12.5 applications for major development will be decided on average per year. This is estimated to cost on average £262,737 per year.

- 7.433 Developers will continue to pay a fee to the local planning authority for applications submitted to them. This will result in the average local planning authority receiving revenue of £258,771 on average per year. LPAs will also be required to participate in the application process for planning applications made to the Welsh Ministers. It is assumed that the role of the local planning authority in these applications will be similar in terms of costs to that of participating in the appeal process. Therefore, it is estimated that the cost of an average poorly performing local planning authority participating in the process where applications are made to the Welsh Ministers will be on average £787,384 per year.

#### *Appeals*

- 7.434 LPAs will continue to participate in appeals that are submitted as a result of the determination (or non-determination) of the planning applications submitted to them. It is estimated that there will be 17.5 appeals decided on average per year, which is estimated to cost the average local planning authority £30,485 per year.
- 7.435 In summary, it will cost the average local planning authority an estimated £293,222 per year to determine planning applications and participate in the appeal process. It will also receive revenue from the planning application fees, which is estimated to be on average £258,771 per year. However, there is a new cost associated with participating in the process for applications made direct to the Welsh Ministers, which is estimated to be £787,384 per year. Therefore, the total average cost of option 3 for the average local planning authority is £821,835 per year – [£34,451 of which is an existing cost that LPAs currently incur when continuing to determine planning applications and



to participate on the appeal process, and £787,384 of which is a new cost incurred as a direct result of the proposal.]

## Development Industry

### *Applications*

7.436 The cost of making a planning application to the Welsh Ministers (will be the same as making an application to a local planning authority. As identified in option 1, the total average cost for developers is estimated to be £9,364,166 per year.

### *Appeals*

7.437 Under option 3 it is estimated that 50% of planning applications in a poorly performing authority will be made to the Welsh Ministers and, therefore, they will not have a subsequent right of appeal. It is assumed that the number of appeals submitted under option 3 will also be reduced by 50%. The cost of making 17.5 appeals is estimated to be £17,040 on average per year.

7.438 The total average cost of option 3 for developers is estimated to be £9,381,206 per year. In comparison with option 1 (do nothing), this could result in an estimated average cost saving of £16,380 per year.

## The Community

7.439 The role of the community and interested parties in option 3 will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new costs for interested parties and the general public under option 3.

## **Benefits**

### Welsh Government

7.440 For the Welsh Ministers, option 3 demonstrates their leadership and determination to tackle poor planning performance by LPAs. They will benefit from the positive impact designation, or the threat of designation, is expected to have on local planning authority performance. This is expected to improve so that designation is avoided, further contributing to efforts to improve the planning system and support economic recovery.

7.441 However, option 3 does not provide a proportionate approach for Welsh Ministers, or for the planning system as a whole. The number of planning applications that could be made to the Welsh Ministers is large and would prove expensive and difficult to resource sufficiently. It also does not provide the most appropriate focus for the Welsh Ministers, which should be on significant development which will have the biggest impact on Wales.

### Local Planning Authorities

- 7.442 Option 3 will encourage LPAs to improve their performance in processing and determining planning applications. The potential drop in income through reduced fees and the impact on their reputation should result in greater effort being put into ensuring decision timescales are met and that the decisions themselves are of good quality.
- 7.443 The scope of option 3 may make it difficult for LPAs to be un-designated. By allowing both minor and major applications to be made to Welsh Ministers, LPAs may lose too much casework, and fee income, leaving them underfunded and with insufficient casework to improve performance.

### Development Industry

- 7.444 Under option 3 developers will benefit from a higher proportion of applications being determined within the expected timescale of 8 weeks. It is also anticipated that the quality of decisions will increase. This streamlining of the planning system will provide developers with the opportunity to progress their proposed schemes more quickly, or to amend or stop them if they do not receive permission to develop. This change in decision times and quality is likely to extend to all applications as it is anticipated that the beneficial impact of this proposal will be an improvement in local planning authority behaviour in general.

### The Community

- 7.445 The role of the community and interested parties in option 3 will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new benefits for interested parties and the general public under option 3

### **Summary and Preferred Option**

- 7.446 The current planning system provides a framework for the consideration and determination of applications for planning permission. However, there is evidence to suggest that development is being delayed through the poor performance of LPAs in.
- 7.447 In order to help streamline the planning system and encourage development it is proposed to identify and designate LPAs as poorly performing against clearly identified criteria. When a local planning authority is designated, developers will have the option to submit their application for planning permission to the Welsh Ministers.
- 7.448 Option 3 is not the preferred option because it provides developers with the option of submitting all planning applications (both minor and major applications) to the Welsh Ministers. This has the potential to leave the designated authority unable to improve their performance and be de-designated. Equally, this would require significant and ongoing investment in

resources required by the Welsh Ministers to enable them to manage the casework and achieve the timeliness and quality targets expected.

7.449 The preferred option, is option 2 which will enable the Welsh Ministers to designate poor performing LPAs, with the consequence that developers may submit planning applications for major development only to the Welsh Ministers. This is a proportionate approach to streamlining the planning system and encouraging LPAs to improve their performance. It enables the Welsh Ministers to take a proportionate role in the planning system, but only in relation to major development which has the greatest potential to have a beneficial impact on Ministerial aims of encouraging economic growth and building a sustainable economy.

*Table 7.15: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Government	£96,380	£87,995	Per designation
Local Planning Authorities	£199,455	£21,775	Per designation
Development Industry	£9,395,126	£2460	Per designation

7.450 The summary of cumulative costs for the Bill are set out in Annex A

#### Guidance

7.451 There will be a cost, through the production of appropriate guidance, explaining the associated changes with the Welsh Ministers decision making powers. These costs are outlined in the development management section.

## **Development Management**

### **Statutory Consultees – Pre-Application Consultation (Part 5, Section 35)**

#### **Options**

7.452 Three options have been considered:

- Option 1 - Do nothing i.e. there are no set timeframes for statutory consultees to respond to planning applications.
- Option2 - Duty for statutory consultee responses to be substantive and time limited and performance to be reported on.
- Option 3 - Duty for statutory consultee responses to be substantive and time limited and no requirement for performance reports.

#### **Option 1 - Do nothing**

##### **Description**

7.453 This option represents the status quo. Evidence has demonstrated that consultation responses can be delayed, which can subsequently delay the determination of an application. Responses have also been reported to be disproportionate or non-committal. Developers do currently engage with statutory consultees prior to submitting their applications, although this is at their discretion and consultees do not have to respond.

##### **Costs**

###### Welsh Government

7.454 The current system does not result in any cost to the Welsh Government.

###### Local Planning Authorities

7.455 Late, inadequate or disproportionate responses from statutory consultees can result in LPA officers having to carry out additional work in order to be able to determine an application.

7.456 Often, a LPA will have to ask a developer to make amendments to a scheme as a result of statutory consultee responses or attempt to find an acceptable solution that all parties find acceptable.

###### The Development Industry

7.457 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the 'cost of delays to the development industry' in section 7.4.

### Statutory Consultees

7.458 The evidence that supports the Bill suggests that consultees do not engage early enough in the planning application process and can cause delay. Evidence also suggests that developers can initially provide insufficient information to enable consultees to respond which in turn has an impact on the determination date and cost accrued to consultees in terms of time spent on their response.

7.459 The responses provided by some consultees can be disproportionate. This suggests that they are not making efficient use of their own time and causing themselves to incur costs by providing comments and information beyond what is needed to allow a planning officer to make an informed decision in respect of an application.

### **Benefits**

#### Welsh Government

7.460 There are no benefits of retaining the current system.

#### Local Planning Authorities

7.461 There are no benefits of this option to the LPA as it does not address the issue of delay within the system.

#### The Development Industry

7.462 There are no benefits of delay to the developer/land owner.

### Statutory Consultees

7.463 Currently statutory consultees are normally provided with a period of 21 days to respond to consultations once an application has been submitted. This is not a formal requirement and they are not required to respond. The benefit of the current system for consultees is that they can respond later than the informal period provided by LPAs and as resources permit. Therefore there is a degree of flexibility on the consultee body to comply with any tight deadlines, unlike with the LPA and developer. Also consultees do not have to liaise with the developer prior to the submission of an application.

### **Option 2 - Duty for statutory consultee responses to be substantive and time limited and performance to be reported on.**

#### **Description**

7.464 For major applications, the initial statutory consultation will be carried out by the developer with a follow up consultation by the LPA post-submission to ensure that proposals comply with initial comments. It is anticipated that

statutory consultees at pre-application stage will be consistent with those bodies consulted post-submission.

- 7.465 This option requires statutory consultees to provide responses to consultations within a set time limit. This limit will be defined in secondary legislation but is likely to be 21 days, although there may be flexibility for different types of applications. It is also proposed to require that consultees provide substantive responses to consultations, the definition of which will also be provided in secondary legislation but will broadly require statutory consultees to state whether they object to the proposal and how their objection can be overcome. In order to encourage consultee bodies to reflect with these requirements primary legislation will require that they publish annual performance reports detailing compliance with the requirements.

## **Costs**

### Welsh Government

- 7.466 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section.
- 7.467 It is intended that statutory consultees will publish their performance reports on their websites. However, if it is brought to the Welsh Government's attention that a statutory consultee is underperforming in terms of meeting their target figures for responses they will be asked to explain their performance.

### Local Planning Authorities

- 7.468 This option will not result in any additional cost to the LPA.

### The Development Industry

- 7.469 For major applications (an average of 600 applications in Wales a year) initial pre-application statutory consultation will be carried out by the developer, which will allow issues to be resolved before the application is submitted.
- 7.470 Formally consulting a consultee body will not be an onerous process and will involve the applicant sending an email or letter to the consultee body with information about where they can view the application. It is estimated that this would cost the development industry approximately £7,800 a year.

### Statutory consultees

- 7.471 Currently statutory consultees are formally consulted once by LPAs on submission of an application. This is often followed up by subsequent informal consultations to establish if the body is satisfied that their concerns have been addressed. The fact that consultees must engage with the developer during the pre-application stage, rather than the LPA in the normal way for major applications will not occur additional cost as it represents a transfer of

responsibility in terms of who carries out the consultation for major applications and who consultees respond to and does therefore not represent an additional burden.

7.472 Provided that consultees have effective work load monitoring systems in place, which could be as informal as a spread sheet, they should be able to easily produce reports of their performance. This may however involve changes to a workload monitoring system in order to collect the required data, which would involve a one off cost to potentially each statutory consultee. Some consultees may be rarely consulted and so may not have a workload monitoring system, meaning that data may be collected and logged manually. It is estimated that the cost for producing these types of reports is £75 per statutory consultee and a total cost for all 14 statutory consultees of £1050 per year, across Wales.

## **Benefits**

### Welsh Government

7.473 There will be a reduction in the negative impact of delay in the planning system on the Welsh economy. The cost of this is discussed in section 'cost of delay to the development industry' above in 7.4.

### Local Planning Authorities

7.474 With this option LPAs will have to engage less with statutory consultees on behalf of the developer in an attempt to achieve an acceptable solution. There should be fewer instances where the LPA has to go back to the statutory consultee to clarify what their response means for the development proposal since the developer will have established this prior to submitting the application. The LPA will have more time to dedicate to determining an application with all the necessary information available to them on submission.

### The Development Industry

7.475 The primary advantage for the developer/landowner of this option is that there will be less delay in the planning application determination process and greater consistency in terms of the comments provided by consultees. They will be able to submit schemes which have been informed by statutory consultees comments and receive quicker determinations.

### Statutory Consultees

7.476 The main benefit from the changes proposed is that statutory consultees will adopt efficient work practices and so in turn make cost savings. On occasions statutory consultees have been known to provide overly long and disproportionate responses to consultations, including holding objections. Statutory consultees will be able to develop relationships with developers and be able to resolve matters of concern before an application is submitted. Therefore their responses to post-submission consultation carried out by

LPAs will simply require confirmation as to whether the proposal satisfies their original comments, thereby making for a quicker consultation and subsequent determination.

### **Option 3 - Duty for statutory consultee responses to be substantive and time limited and no requirement for performance reports.**

7.477 This option is very similar to option 2 in that it proposes that legislation will require consultees to provide substantive responses to developers within a prescribed period prior to the submission of an application. However, there will be no requirement to produce reports on performance and therefore no way to assess compliance with the requirements.

#### **Costs**

##### Welsh Government

7.478 The Welsh Government will still have to produce guidance and so the costs identified in option 2 will apply.

##### Local Planning Authorities

7.479 Similarly, without anything to encourage statutory consultees to comply with the duty placed on them, LPAs are likely to experience all of the costs of option 1 as they will have to carry out initial consultations post-submission if consultees haven't responded to developers.

##### The Development Industry

7.480 Without any mean of monitoring whether statutory consultees comply with the duty placed on them it is likely that developers will maintain the cost of delay whilst incurring the additional cost of consultation in option 2. Developers will not be able to resolve issues prior to the submission of an application.

##### Statutory Consultees

7.481 Without the requirement for performance reports, there is no formal means of measuring compliance. There is therefore a high likelihood that consultees will not feel obliged to comply with the legislation. If this occurs, all costs of option 1 will be experienced and none of the benefits of option 2.

#### **Benefits**

##### Welsh Government

7.482 This option could lead to a reduction in delay in the determination of applications and could reduce the cost of delay to the development industry, in turn enhancing the benefit to the Welsh economy. However, the reduction in delay is likely to be limited since there will be no means of encouraging



statutory consultees to comply with the requirements to provide a substantive response within a prescribed period.

#### Local Planning Authorities

- 7.483 Limited benefit LPAs provided statutory consultees improve performance. Without adequate monitoring the improvement is unlikely to be less than in option 2.

#### The Development Industry

- 7.484 This option could lead to a reduction in delay in the determination of applications and so could reduce the cost of delay to the development industry. However, the reduction in delay is likely to be limited since there will be no means of encouraging statutory consultees to comply with the requirements to provide a substantive response within a prescribed period.

#### Statutory Consultees

- 7.485 As with option 1, consultees can respond when they wish. Therefore there is a degree of reduced pressure on the consultee body to comply with any deadlines.

#### **Preferred Option**

- 7.486 Option 1 reflects the current situation, which has been evidenced to cause delay in the determination of applications and therefore requires greater use of resources from LPAs to chase responses and results in a greater cost to the developer in terms of delays.
- 7.487 Option 2 is the preferred option since it will reduce delay most significantly through encouraging good performance from statutory consultees which will be formally recorded using performance reports. Without requiring performance reports, it is unlikely that any of the benefits of option 2 will be experienced, whilst most of the costs of option 1 will remain.
- 7.488 There will be some cost associated with the preferred option, including the cost of producing guidance by the Welsh Government, the cost of creating reports by statutory consultees and the costs of consultation for developers of major schemes. However, these costs are generally small, especially when considered in the light of the potential significant savings to the economy to be made from reduced delay. Developers and statutory consultees will be able to resolve matters prior to the submission of an application, resulting in quicker determination of planning applications.
- 7.489 Option 3, although placing requirements on statutory consultees, does not provide a means of encouraging them to comply with the requirements and so much of the delay experienced in option 1 is likely to continue.

*Table 7.16: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Development Industry	-	£37,500	Annual Cost
Statutory Consultees	-	£1,050	Annual Cost

7.490 The summary of cumulative costs for the Bill are set out in Annex A

## **Statutory Consultees - Applications for approval (Part 5, Section 26)**

### **(Reserved matters and applications for the approval of planning conditions)**

#### **Options**

7.491 Three options have been considered:

- Option 1 - Do nothing i.e. no provision for statutory consultation.
- Option 2 - Statutory consultation at the discretion of the LPA.
- Option 3 - Statutory Consultation must be undertaken in all instances.

7.492 It is proposed to give LPAs the discretion to decide whether to consult the statutory consultees who were consulted on the primary planning application. Where the LPA chooses to exercise this discretion, it is intended that the statutory consultee is bound by duties to provide a substantive response within a set time frame.

#### **Option 1 – Do nothing**

##### **Description**

7.493 Applications for approval include applications for the approval of planning conditions and reserved matters. Currently, if an application for approval (discharge a condition or for approval of reserved matters) is submitted the LPA will consult stakeholders they consider relevant. Often these will be bodies who commented on the main application in relation to the particular matter for approval. The information sought from consultees can often be vital in the determination of the application especially if, for example, it relates to a technical condition they specifically requested be attached to the planning permission. There is no duty on consultees to respond to these consultations and so delay can occur in the approval of these matters.

##### **Costs**

###### Welsh Government

7.494 There are no additional costs associated with this option; however, the economy of Wales will continue to be affected by the delay experienced in the determination of applications.

###### Local Planning Authorities

7.495 Delay can be experienced in the determination of an application and additional staff resources may be used to chase responses from consultees and seek clarification as there is currently no duty to provide a substantive response within a set time frame.

### The Development Industry

7.496 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the 'cost of delays to the development industry' section in 7.4).

### Statutory Consultees

7.497 There is no additional costs to statutory consultees arising from this option because they can choose whether they wish to respond to a consultation and respond at their convenience if they so wish.

## **Benefits**

### Welsh Government

7.498 There are no identified benefits to the Welsh Government associated with this option.

### Local Planning Authorities

7.499 There are no identified benefits to LPAs associated with this option.

### The Development Industry

7.500 There are no identified benefits to the development industry associated with this option.

### Statutory Consultees

7.501 If the current system remains as it is, consultees will continue to benefit from having no statutory time limits to return their responses, or incentive to provide an appropriate level of detail required in their response.

## **Option 2 – Statutory consultation at the discretion of the LPA**

### **Description**

7.502 This option will give LPAs the discretion to decide which of the 'statutory consultees' from the original application they consider should be consulted in relation to a particular application for approval. Where they do consult a particular body, that body will be bound by the requirements, to provide a substantive response within a particular timeframe and produce performance reports to detail their compliance.

7.503 It is important that this is a discretionary power, as compulsory consultation in all instances i.e. of all original statutory consultees in relation to each application for approval, could result in unnecessary consultation and would be an inefficient use of resources.

## **Costs**

### Welsh Government

7.504 Costs for the required guidance document are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.505 There will be no additional costs to the LPA as it will be their discretion whether to consult or not and this option represents formalisation of the existing informal procedure. If they do decide to consult, the statutory consultee(s) will be obligated to submit a substantive response within a given deadline, reducing the need to chase the information. If LPAs chose to consult in every instance the costs are the same as those set out in option 3.

### The Development Industry

7.506 No additional cost to the Development industry or land owners because this option could lead to a reduction in delay in determining applications.

### Statutory Consultees

7.507 This option will be cost neutral as it represents formalisation of an existing informal process.

## **Benefits**

### Welsh Government

7.508 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the 'cost of delays to the development industry' in section 7.4.

### Local Planning Authorities

7.509 There will be reduced delay in issuing a decision for an application for approval as LPAs will have discretionary powers to apply a duty to consultees, where they consider consultation is necessary.

7.510 LPAs will also have the ability to access important information to assist in determining an application for approval as there will be a duty placed on statutory consultees to provide a substantive response (which should include all the information requested and required by the LPA).

### The Development Industry

7.511 The development industry will benefit from reduced delays as identified in option 1.

## Statutory Consultees

7.512 This option provides statutory consultees an opportunity for more efficient use of their resources and they would only be required to provide a response, should the LPA determine that their input is necessary to determine the application. Furthermore, consultees will be required to provide a substantive response, which will set out a clear framework for what information the consultee is required to submit, rather than relying on what they believe the LPA needs to receive. This will improve the response rate and reduce the time taken to prepare a response.

### **Option 3 – Statutory Consultation must be undertaken in all instances**

#### **Description**

7.513 This option would require consultation with all bodies consulted on a statutory basis in relation to the primary application for each application for approval. The main concern with this option is that it would result in unnecessary consultation and so represent an inefficient use of resources for both LPAs and those bodies required to respond. This would in turn lead to delay in the determination of an application as the LPA would have to analyse and report all responses.

#### **Costs**

##### Welsh Government

7.514 Costs for the required guidance document are set out at the end of the development management section in paragraph 7.815.

##### Local Planning Authorities

7.515 The LPA will spend extra time carrying out unnecessary consultations. Although the cost per consultation is low at approximately £3 (20 minutes of administrative staff time), the volume of consultations needed to be carried out would result in a much larger additional cost. On average 18,460 planning permissions are granted every year in Wales, if these applications contained just two conditions each the additional cost would equal approximately £110,800 per year.

7.516 The LPA would also incur additional cost to analyse and consider all of the responses received, since consultees would be bound by legislation to respond.

##### The Development Industry

7.517 Unnecessary delay would occur where consultations are required increasing the overall cost of delay.

### Statutory Consultees

7.518 This option would require consultees to respond to unnecessary consultations. This would result in additional cost as it goes beyond formalisation of the existing procedure and would be an inefficient use of resources.

### **Benefits**

#### Welsh Government

7.519 There is no benefit from this option which is inefficient and will result in additional cost to the Welsh economy.

#### Local Planning Authorities

7.520 LPAs will have the ability to access important information to assist in determining an application for approval offsetting this they will also receive unnecessary responses which will need to be considered (which should include all the information requested and required by the LPA).

#### Development Industry

7.521 There are no perceived benefits to applicants. Although the delay in receiving determinations owing to slow or disproportionate consultation responses should be eradicated, this option will result in unnecessary consultation and prevent LPAs from making swifter decisions where they consider consultation is not required.

### Statutory Consultees

7.522 No perceived benefits to statutory consultees because they will have to use additional resources responding to unnecessary consultations.

### **Preferred Option**

7.523 Option 1 reflects the current situation where consultees do not have to respond to informal consultations by LPAs which may delay decision making

7.524 Option 2 is the preferred option. Although option 3 does ensure that LPAs receive all of the necessary information in order to be able to make a fully informed decision in respect of an application for approval, there will be wasted effort in terms of unnecessary consultations and responses. Option 1 on the other hand does not present a means of ensuring that delay reduced and so will not result in any cost savings. Option 2 is therefore the most beneficial in terms of reducing delay and making the most efficient use of resources by ensuring that LPAs are able to obtain the information they need to make timely decisions.

## **Design and Access Statements (Part 5, Section 27)**

### **Options**

7.525 Two options have been considered:

- Option 1 – Do nothing (retain the existing mandatory requirement for design and access statements to be submitted for most planning and listed building consent applications within primary legislation)
- Option 2 – Remove the mandatory requirement for design and access statements from primary legislation

### **Description**

7.526 It is proposed to remove the specific requirement for a design and access statement to be submitted with most planning applications and listed building consent applications.

#### **Option 1 – Use secondary legislation to require a statement of design and access principles.**

7.527 Section 62 of the TCPA 1990 and Section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provide a power for development orders to prescribe the form of planning applications. Consequently article 7 of The Town and Country Planning (Development Management Procedure) Order 2012 (the 2012 Order) and regulation 6 of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (the 2012 Regulations) require most applications for planning permission and listed building consent to be accompanied by a statement of design and access principles relating to the proposed development.

7.528 This option proposes no change to legislation and LPA would continue to require a design and access statement for applications for planning permission or listed building consent as part of the validation process.

#### **Option 2 - Remove the mandatory requirement for design and access statements from primary legislation**

7.529 This option would see the specific requirement for design and access statements removed from Section 62(5) of the TCPA 1990 and Section 10(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, design and access statement would remain a requirement alongside planning applications as article 7 of the 2012 Order and regulation 6 of the 2012 Regulations (both made under general powers in each Act to make provision for documents accompanying applications) are proposed to remain. While there is no immediate change to what needs to accompany applications to LPAs this approach affords greater flexibility to the range of options the Welsh Government could consider at a later date.



## **Assessment of Options**

- 7.530 Whilst Section 27 of the Bill removes the mandatory requirement for design and access statements from Section 62(5) of the Town and Country Planning Act 1990 and Section 10(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990, design and access statements will still be required to be submitted with planning applications due to provisions in the 2012 Order and the 2012 Regulations.
- 7.531 The policy intention behind removing the mandatory requirement for design and access statements from Section 62(5) of the Town and Country Planning Act 1990 and Section 10(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is to provide flexibility for the Welsh Government in considering the most effective way to raise design standards in the planning process.
- 7.532 The provisions in the 2012 Order and the 2012 Regulations design and access statements are unaffected and therefore design and access statements will still need to be submitted with planning applications. So there is no procedural change for stakeholders and therefore no change in costs. As there is no change in cost a cost-benefit analysis is not provided for this section.

## **Summary and preferred option**

- 7.533 Option 2 is the preferred option as subordinate legislation will for the time being still require the submission of design and access statements for the relevant planning applications. However, by removing the mandatory 'statement' element of design and access statements from the TCPA 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, this will allow the Welsh Government the flexibility to undertake research into how design and access issues could be better addressed and improved in the planning system in the future. This would require a further RIA alongside changes to subordinate legislation.

## **Non-Validation Appeals (Part 5, Section 28)**

### **Options**

7.534 Three Options have been considered:

- Option 1 - Do nothing, local planning authorities (LPAs) determine what information is required to register a planning application.
- Option 2 - Introduce a right of appeal against the local planning authorities (LPAs) decision not to register a planning application.
- Option 3 - Introduce the right to appeal against non-determination where the LPA has not registered the application within the statutory time period.

### **Option 1 – Do Nothing**

#### **Description**

7.535 LPAs have a wide ranging power to require any information that they consider necessary in support of an application and, following the Pootschi (Secretary of State vs Newcastle upon Tyne) judgement in 2009, the LPA is the sole arbiter of what additional information is necessary with the applicant having little ability to challenge the relevance of the information requested other than through Judicial Review. This provides no incentive for LPAs to request information in a proportionate manner and gives little option to the applicant other than to provide the information requested, often at significant cost and causing delay in the application process.

7.536 Prior to the Pootschi judgement in 2009, if the LPA refused to register the planning application as a valid application and the statutory determination period had expired, the applicant could appeal to the Planning Inspectorate against non-determination of the application. However, the Pootschi judgement held that the Secretary of State was unable to entertain an appeal against non-determination where validation has not taken place and this remains the current position in Wales. This means that when an LPA refuses to register a planning application without an item of information, the applicant currently has little option other than to submit the information requested, which delays the application process.

#### **Costs**

#### **Welsh Government**

7.537 Following the Pootschi judgement<sup>66</sup>, the Welsh Ministers cannot accept appeals for applications that have deemed to be invalid by the LPA where an applicant has failed to provide requested information

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<sup>66</sup> Newcastle City Council v SSCLG & Kayu Poostchi (CO/9666/2009), 11 December 2009

7.538 Where the LPA has registered the application and fails to determine it within the statutory time period, the applicant can appeal against non-determination. If LPAs write to the applicant during this time to inform them that the application is invalid, Welsh Ministers are unable to determine the appeal in respect of non-validation because of the Pootschi judgement. The Welsh Ministers can however, decide that the application is invalid in the course of determining an appeal against non-determination. The Welsh Ministers do not therefore currently incur additional costs in respect of non-validation.

### Local Planning Authorities

7.539 Validation of an application causes an LPA to incur costs through checking the information submitted. The LPA will incur administration costs when they write to a developer to inform them that their application has been deemed invalid, as specified by Article 8 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (. Further costs will be incurred when the requested information is submitted and checked prior to validation.

7.540 According to Welsh Government statistics, a total of 20,140 applications are submitted each year across Wales. Based on the information being checked by a planning officer paid £14 an hour, taking 20 minutes to write a letter, and an assumption that between 5% and 30% of applications would require further information for the purposes of validation, in total LPAs will incur a cost of between £4,750 and £28,500 a year through informing applicants that further information is required to validate their application.

7.541 The newly submitted information must then be checked when submitted to the local planning authority. This is estimated to take between 20 minutes to 1 hour of planning officer time and would therefore cost between £4.80 to £14.00 per application. This equates to approximately £29,000 to £84,600 in total per year for Welsh LPAs where 30% of applications require further information. If only 5% percent of applications required additional information to validate them this would equate to £4,800 to £14,100.

7.542 LPAs are also open to challenge from third parties and or objectors if they register an application without the required information which has resulted in many LPAs taking an over-precautious approach to validation, because of the threat of legal action.

### Development Industry

7.543 Disputes that arise at the validation stage delay the planning application process and ultimately delay development, which has cost implications. Requests for unnecessary information also adds to the cost of preparing a planning application.

7.544 Case study research carried out as part of the Killian Pretty Review (2008) found that almost half (48%) of the cases surveyed had problems with the validation procedure – with 20% reporting substantial problems causing delay

and exhibiting poor practice. A figure of 30% has been used to quantify the cost of delays to applications caused by validation in the table below after consultation with the Planning Officer's Society Wales.

7.545 The average number of decisions made annually on householder, minor, and major planning applications between 2009 and 2013 has been used to estimate the cost of validation delays. The total additional cost per application is calculated by combining the average number of applications determined (taken from Welsh quarterly statistics data) with estimates of approximate costs for preparing a planning application by type of development<sup>67</sup> and making assumption that a validation dispute (i.e. request for information and/or delays in registration) adds 10% to the cost of making an application.

Table 7.17

Type of Application	Average annual number of applications (2009-2013)	Cost of preparing each application	Number of applications significantly delayed because of validation p.a. (30%)	Additional cost per application	Total additional cost
Householder Development	9,435	£687	2,830	£69	£195,270
Minor Development	8,430	£1085	2,500	£109	£272,500
Major Development	600	£18,613	180	£1,861	£334,980
<b>TOTAL</b>					<b>£802,750</b>

7.546 The approximate costs for preparing a planning application have been taken from survey estimates summarised in the Department for Communities and Local Government 2012 consultation paper on streamlining information requirements for planning applications. The research finds that for the sample there is a wide range in the costs incurred by applicants when submitting a planning application both within categories of development and across different categories and so mid-point figures householder, minor development (including dwellings) and major development (including dwellings) have been used.

7.547 Based on the assumed averages, the perceived total additional cost of delays to developers caused by non-validation of applications in Wales is £802,750 per year based on 30%, costing between £70 and £2,000 per application. If only 5% of applications were delayed this figure would be £240,000.

<sup>67</sup> Department for Communities and Local Government [Streamlining Information Requirements for Planning Applications: Consultation](#) (July 2012)

## **Benefits**

### Welsh Government

7.548 The Welsh Ministers have not incurred additional expense of considering whether an application is invalid since the Pootschi Judgement, but this is far outweighed by the cost of delay to the Welsh economy.

### Local Planning Authorities

7.549 LPAs can ensure that all required information is provided upfront, which should allow a decision within the 8 week period and will not have to request information at a later stage.

### Development Industry

7.550 Currently developers must provide all information as requested by the LPA, or risk their application not being validated. However, this may have the effect of preventing delay once the application is registered since more information would have been provided up-front for consideration.

## **Option 2 – Introduce a new right of appeal against the LPA’s decision not to validate a planning application**

### **Description**

7.551 This proposes the option to introduce a right of appeal against an LPAs decision not to validate a planning application. The probability of challenge through an appeal process will have a positive influence on LPAs in validating applications, contributing towards more proportionate requests for information they require to be submitted with an application. The appeal process will be a quick one, comprising a desk based exercise carried out by a planning officer of the Planning Inspectorate. The appeal will concentrate on the disputed information and if the appeal is successful, the application will be handed back to the local planning authority to determine.

### **Cost**

### Welsh Government

7.552 There is no intention to charge appellants for appeals and so the costs for determining the appeal will be borne by the Welsh Ministers.

7.553 The costs incurred will be due to the time spent making a determination, which will be kept to a minimum since the process will be desk-based and determined by a planning officer. No site visit will be necessary and appeals will be dealt with through written representations. On initial calculations, these costs have been estimated to be £83 per appeal, based on the costings identified below:

Stage	Time	Grade	Cost
Validate & Issue	40 minutes	AA	£23
Consider & recommend	60 minutes	AO	£37
Determination	30 minutes	HPO	£23
Estimated cost per appeal			<b>£83</b>

7.554 The overall cost to the Welsh Ministers of appeals is likely to be between £16,800 and £84,000 based on a predicted 1-5% of all applications (20,140) being invalid and those invalid applications being appealed against. It is expected that the actual cost will be toward the lower end of this estimate.

7.555 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.556 On deciding that an application for planning permission is invalid, an LPA will have to provide notification to the applicant of that decision. With the ability if applicants to appeal against the LPAs decision not to validate a planning application, it is expected that LPAs will make more considered and proportionate decisions in respect of validation.

7.557 According to Welsh Government statistics, a total of 20,140 applications are submitted each year. It is estimated that the number of applications not validated on initial submission will range between 1 and 5%. LPA planning officers will have to justify their reasons for non-validation in the notice which will also act as their defence if an appeal is submitted. Based on an hour of planning officer time (£14) it is estimated that the cost of this procedure will range between £2,800 to £14,100 for the whole of Wales.

7.558 Where developers decide not to submit an appeal against a non-validation notice, or where their appeal is unsuccessful, LPAs will incur the cost of checking the newly submitted information (as in option 1), costing between £5 and £14 per application. The current average rate of an LPA's planning decisions being upheld on appeal is 63% (based on annual average between 2008 and 2013). If this rate is applied to this option between 127 and 630 appeals will be upheld and so will require the applicant to submit further information. Based on the costs identified above in total LPAs in Wales will incur a cost of between £635 to £9,500 per year to check the information required to validate applications which have been subject to an appeal.

### Development Industry

7.559 Although a charge will not be made for validation appeals made to the Welsh Ministers, developers will incur an administrative cost where they make an appeal. This cost will accrue from time spent completing the appeal form and providing other written submissions to support their case. The administrative

cost is based on an hour of a graduate planner/planning professional's time (based on average of fees charged by consultancies) of £40.

7.560 If between 1% and 5% of applications (20,140) were delayed the total cost would range from £8,000 to £40,300 each year to appeal against non-validation. Where a developer decides not to appeal against a non-validation notice they would incur the cost identified of option 1 of £70 and £2,000 per application to validate it. Similarly, where an appeal was unsuccessful and the LPAs non-validation notice upheld cost would be incurred as the developer would have to submit the required information. Above, it has been estimated that between 127 and 630 appeals will fail and so developers will be required to submit further information in this number of instances. Based on a cost of £70 to £2000 to validate an application this would result in a cost to the development industry of between £8,900 and £1,300,000 per year. The latter cost is very unlikely as it is expected that only 1% of applications will require further information for validation through this option, rather than the higher range of 5%. Furthermore, it is unlikely that every non-validation notice will be appealed. In many instances, the developer may simply comply with the notice. It is also extremely unlikely that all of the applications which fail on appeal will incur the highest cost to validate them. If 1% of applications are subject to a non-validation notice and are appealed and those which fail (127 average) incur the higher additional cost to validate them, the overall cost would be £255,000, which is considered to be a more realistic estimate.

## **Benefits**

### Welsh Ministers

7.561 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. Refer to the 'cost of delays to the development industry' in section 7.4.

### Local Planning Authorities

7.562 The introduction of the 1APP system and greater formality in the validation of applications since the insertion of Section 327A into the Town and Country Planning Act 1990 (as amended for Wales), coupled with the threat of legal challenge by third parties, has led to LPAs taking a precautionary approach to validating planning applications. This has resulted in some LPAs imposing disproportionate requests for information at the validation stage.

7.563 The more documents that accompany each application, the greater it will cost the LPA to validate due to the time required to review each document. We expect the proposed changes will encourage LPAs to take a more proportionate approach to requests for information and in turn reduce their administrative costs from a potential £34,000 - £114,000 down to £2,800 to £24,000.

## Development Industry

7.564 Option 1 demonstrated that the costs incurred by developers as a result of delays caused by non-validation can be significant. Although developers are expected to incur an administration cost in making appeals, the number of instances where non-validation will occur is expected to reduce as the threat of an appeal will encourage LPAs to be more proportionate in their information requests. Due to the proposed quick turn-around of the appeal against non-validation, delays experienced by the developer will be kept to a minimum where the appeal is successful. It is likely that the development industry will incur a cost of between approximately £8,000 (if appeals are won) to a maximum of £255,000, across Wales. This is a considerable cost saving when compared to the costs incurred in Option 1.

### **Option 3 – Introduce the right of appeal against non-determination of an application on the grounds of validity.**

#### **Description**

7.565 This option introduces a right of appeal against non-determination by giving a clear legal status to an application where there is a validation dispute between the LPA and applicant. This mirrors the existing English system where amendments have been made in secondary legislation to provide applicants with a right of appeal in relation to non-validated applications.

7.566 This would introduce the right for applicants to send a notice to the LPA where they consider that a request for information prior to validation is not needed. Before the end of a statutory determination period, the LPA must notify the applicant that either (i) the authority no longer requires the requested information (a validation notice) or (ii) the authority continues to require the information (a non-validation notice). A non-validation notice, or failure to serve one within a specified timescale, would form the basis of a subsequent appeal against non-determination under Section 78 of the TCPA 1990.

7.567 These measures would introduce the right to appeal against non-determination by giving clear legal status to an application where there is a validation dispute between the LPA and applicant. It also requires applicants to justify why they consider the information requested by the LPA is not needed, ensures they give full consideration to the LPA request. This is to ensure that appeals are only pursued where there is a genuine impasse between the applicant and LPA, after negotiation has been exhausted.



## **Cost**

### Welsh Government

7.568 Enabling the Planning Inspectorate to consider appeals against non-determination where no validation has taken place will effectively reintroduce the legal position that existed prior to 2009, when the courts questioned the use of this specific procedure. Currently, the Welsh Ministers are unable to determine these appeals. It has been identified that between 127 and 630 appeals would be submitted per year in respect of non-validation notices. Where an appeal occurs against non-determination, the Welsh Ministers determine the entire application on behalf of the LPA. On average it costs the Welsh Ministers £1,600 to determine an appeal based on written representations, £5,100 for a hearing and £14,500 for an inquiry. It is likely that non-determination appeals would comprise a mix of means of appeal and this will result in a significant cost to the Welsh Ministers, even if the lower expected number of appeals are submitted and they are dealt with using the written representation procedure. The cost of guidance identified in option 2 would also be incurred with this option.

### Local Planning Authorities

7.569 This option will increase the administration costs incurred by an LPA as it introduces an additional stage of correspondence between the LPA and applicant. Initially the LPA will write to the applicant to inform them that the application is invalid, then the developer/applicant writes back, followed by the LPA issuing a notice, and the developer appealing against non-determination after 8 weeks if they continue to disagree with the requirements of the LPA. At this point the LPA will normally submit a statement to the appointed person to defend their case. The initial letter is estimated to take 20 minutes, the drafting and issuing of the notice, 30 minutes and the preparation of a statement up to an hour. If these steps are carried out by a planning officer the relative costs for each stage would be; £4; £7, and £14 i.e. a total cost of £25 if each application in relation to which a non-validation notice is served, goes to appeal.

7.570 If 1% of applications (20,140) were subject to non validation notices, this would result in a cost of approximately £5,200. If 5% of applications were subject to non validation notices, this would result in a cost of approximately £25,200 per year.

7.571 Where developers decide not to submit an appeal against a non-validation notice, or where their appeal is unsuccessful, LPAs will incur the cost of checking the newly submitted information (as in options 1 and 2), costing between £4 and £14 per application. In addition, the costs identified in option 2 will also be incurred to check the information required to validate applications which have been subject to a failed appeal. This equates to between £635 to £8,900 per year.

## Development Industry

7.572 It is likely that the developer will incur additional administration costs by being engaged in this option as they have to follow a procedure which involves them first considering the LPAs comments and writing back to them if they disagree. Then submitting an appeal if the LPA continue to require the information through a notice of non-validation. Based on an hour of a junior consultant's time costing approximately £40, an initial letter taking 30 minutes to draft and an appeal statement taking one hour the respective costs would be £20 and £40. As above, working on the principle that 1-5% or 200 - 1000 applications would be delayed by validation procedures, this procedure would cost approximately £4000 - £20,000 (letter) to £12,000 - £60,300 (letter plus appeal).

7.573 As in option 2, where a developer decides not to appeal against a non-validation notice they would incur the cost identified of option 1 of £70 and £2,000 per application to validate it. Similarly, where an appeal was unsuccessful and the LPAs non-validation notice upheld a cost would be incurred as the developer would have to submit the required information. It has been estimated that this would result in a cost to the development industry of between £8,900 and £1,300,000 per year. The latter cost is very unlikely. There is a risk that a greater cost than option 2 will be incurred since the determination of the entire application by the Welsh Ministers provides LPAs with less incentive to be more proportionate in their validation requirements. However, this process encourages dialogue which should allow resolution of many issues. It is also unlikely that every non-validation notice will be appealed. In many instances, the developer may simply comply with the notice. It is also extremely unlikely that all of the applications which fail on appeal will incur the highest cost to validate them. If 1% of applications are subject to a non-validation notice and are appealed and incur the higher additional cost to validate them, the overall cost would be £255,000.

7.574 Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy, see paragraph 7.4. As the appeal is determined by the Planning Inspectorate whose decision is final. If the developer is not happy with the determination they may challenge the decision in the courts.

## **Benefits**

### Welsh Government

7.575 There is no benefit to the Welsh Ministers or the Planning Inspectorate.

### Local Planning Authorities

7.576 LPAs will carefully consider their requests for information which should lead to a more proportionate approach to requiring additional information in order for an application to be validated. However, LPAs will also make a cost saving as they will retain the planning application fee, when the Welsh Ministers take on

the cost of determining an application at appeal and this may limit the incentive for LPAs to be proportionate in their requests.

### Development Industry

7.577 This proposal aims to introduce a mechanism to address the current issue of the Welsh Ministers not being able to consider non-validation matters at appeal through the non-determination process. The main impact of the reinstatement of appeal rights where LPAs fail to validate planning applications is considered to be behavioural. The threat of challenge through an appeal and the giving of greater consideration to whether information is genuinely necessary, should positively influence the behaviour of local authorities and applicants to validate planning applications quicker than at present.

7.578 The proposed changes will ensure that information requests in support of planning applications are proportionate to the scale and type of development. This will reduce the number of requests for supporting information which is unnecessary but which applicants currently have to provide, and pay for in order for their application to be validated.

### **Summary and Preferred Option**

7.579 Option 1, illustrates the delays in the validation process and this is mainly at the cost of the development industry. This option is also the highest cost option for LPAs.

7.580 Option 2 is the preferred option. This option, although at a cost to the Welsh Ministers compared to the current situation (option 1), will reduce the delay experienced in the validation of applications and is the lowest cost option for both LPAs and developers.

7.581 Option 3 maintains an element of delay since developers must wait to make an appeal against non-determination and then for that appeal to be determined. Although costs incurred by LPAs and developers are lower in this option than option 1, the costs to the Welsh Ministers are high, and other costs exceed those in option 2. The likely cost and delay in this option makes it undesirable.

*Table 7.18: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Government	-	£50,400	Annual Cost
Local Planning Authorities	£114,100	-£89,600	Annual Saving
Development Industry	£805,750	-£505,450	Annual Saving

7.582 The summary of cumulative costs for the Bill are set out in Annex A

## **Decision Notices (Part 5, Section 31)**

### **Options**

7.583 Four options have been considered:

- Option 1 - Do nothing, decision notices will be required to set out the permission and conditions.
- Option 2 - Require decision notices to detail the approved plans and record the discharge of conditions.
- Option 3 - Issue a model decision notice template with no legislation.
- Option 4 - Require decision notices to detail the approved plans and record the discharge of conditions and require that decision notice template is complied with.

### **Option 1 – Do Nothing**

#### **Description**

7.584 This option would not address the current confusing situation for stakeholders as to whether details required by conditions have been complied with. This is frequently an issue for subsequent purchasers of property, particularly of commercial property and their funders in seeking to ascertain if a development has been built in conformity with the planning permission. It will mean officers will still have to respond to queries from members of the public regarding whether a development complies with conditions by carrying out searches, or even having to visit the site.

#### **Costs**

##### Welsh Government

7.585 There are no costs associated with this option

##### Local Planning Authorities

7.586 LPAs regularly deal with daily queries in relation to whether conditions have been discharged. These queries can be face to face, over the telephone or some have to be responded to in writing. Such queries take time and so there is an associated cost.

7.587 In England the fee payable for this service is £97 per request<sup>68</sup>. There is no set fee in Wales, it is a discretionary service that means there is no set pricing structure.

7.588 The task of confirming whether conditions have been discharged requires a member of LPA administration staff or a Planning Officer to look through the

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<sup>68</sup> [Welsh Government \(2014\) ,Evaluation of the Planning Permission Process for Housing – Final Report](#)

planning application file and responding to the enquiry confirming the current position of the application. If the planning application relates to a householder development with few conditions then the task should take no more than 30 minutes to complete. However, for more complex developments with a significant number of conditions it could take up to 2 hours. The time it takes will also depend on the record keeping practices of the LPA e.g. how discharge of conditions applications/letters are recorded and whether this information is available electronically.

7.589 The Planning Officers Society Wales (POSW) has indicated that three queries a day are received on average by each LPA. Therefore, on a basis that there is an average of 251 working days in a year, an assumption has been made that an LPA could receive approximately 750 queries in relation to discharges of condition per year. In order to quantify the costs of this, the following calculation has been made on the assumption of an administrative staff paid an annual salary of £18,000.

7.590 The cost to an LPA per enquiry (30 minutes to 2 hours) is estimated to be £4.50 to £18 or up to £28 for a planning officer. This equates to £3,375 to £13,500 or up to £21,000 per LPA per year. Across Wales it is estimated that responding to such queries costs between £84,400 to £525,000 each year.

#### Development Industry

7.591 Currently when property is purchased with planning permission the new owner cannot ascertain from the decision notice whether conditions have been complied with. They can however establish this by writing to, telephoning or visiting the local planning authority which takes time and inevitably holds up the purchase of the property and delays development. There is no fee from the LPA to provide this service but the purchaser of the land may incur conveyancing costs from legal professionals who carry out searches on their behalf. Only a proportion of the overall conveyancing cost will be for planning searches. Assuming that all enquiries involved conveyancing solicitors at an average cost of £100 per query, these queries can be reasonably assumed to cost the development industry, including homebuyers, up to £750,000 per year.

#### The Community

7.592 There are no quantifiable costs to the community however a member of the community interested in the approved plans and conditions would have to get in touch with the local planning authority or arrange to visit the office to see the plans which would also give rise to additional costs for the LPA.

### **Benefits**

#### Local Planning Authorities

7.593 There are no benefits for LPAs associated with this proposal

### Development Industry

7.594 There are no benefits for the development industry associated with this proposal.

### The Community

7.595 There are no benefits for the community associated with this proposal.

**Option 2 – Introduce a requirement that decision notices granting planning permission must detail the approved plans and record the discharge of conditions.**

### **Description**

7.596 This approach would see all decision notices listing the approved plans and require details of discharged conditions to be recorded on the notice. The new legislation would be supported by guidance.

### **Costs**

#### Welsh Government

7.597 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

#### Local Planning Authorities

7.598 In order to comply with the proposed provisions it is likely that the LPA may need to amend decision notices to allow for the referencing of approved plans and recording discharge of conditions on the notice. This would require making changes to its standard decision notice template for outline, full, and reserved matters applications. This will be a one-off task undertaken by a member of admin staff and should take no longer than a day to complete. Based on this assumption the costs should not exceed £1,200 across all LPAs in Wales.

7.599 Many LPAs currently specify the approved plans on a decision notice; these LPAs will not incur any additional costs as a result of making this requirement mandatory.

7.600 For LPAs that do not currently specify the approved plans on the decision notice, it may take an additional 1-5 minutes to produce the decision notice (so that the information is included). This time would be off-set against the time saved by not having to identify the plans by other means e.g. stamping the approved plans or imposing a condition on the permission specifying the plans. It is not considered that the requirement would impose any additional cost on the LPA.

- 7.601 Many LPAs have electronic document management systems where documents including decision notices, are stored. Producing a new decision notice will involve an officer making the relevant alterations or annotations to the relevant condition and the new decision notice will be generated. The time and cost taken to produce an updated decision notice confirming a discharge of condition could be done by a member of administration staff and should take a maximum of 30 minutes, depending on the number of conditions discharged, and cost no more than £5 each time the notice is amended.
- 7.602 In Wales, an average of 18,500 applications are approved each year. Most of these applications will have conditions attached but not all will require discharging formally. Assuming half have conditions which require formal discharge and take the maximum time i.e. 30 minutes to amend the decision notice, the cost of this aspect of the requirement should not exceed £46,250 annually.
- 7.603 The newly proposed system works on the principle that it will be much clearer to members of the public and developers/land owners whether a condition has been discharged. The use of local authority websites to display information and documents should mean that those with a query are able to check this information on a live decision notice themselves and so the overall number of queries should reduce from the estimated 750 per LPA identified in option 1. In addition, where queries do occur they will be less time consuming for all parties. It is not perceived that such queries should take longer than 10 minutes to deal with by an LPA. If the number of queries reduced to one query per day or 250 a year, this should incur a maximum cost of £1,200 nationally.

#### Development Industry

- 7.604 Developers will receive an updated decision notice rather than a letter from the local planning authority which will mean there is no cost to the developer.
- 7.605 It will also mean the developer will potentially not incur conveyancing costs associated with planning conditions.

#### The Community

- 7.606 No cost to the community associated with this proposal.

### **Benefits**

#### Welsh Government

- 7.607 A further benefit to this proposal is that it will provide a consistent approach to development management across Wales, allowing independent measurement and comparison of performance.

### Local Planning Authorities

7.608 This option provides a cost saving of between £38,150 to £480,000 a year across LPAs in Wales. This cost saving mainly comes from a reduction in the time taken to deal with queries in relation to the discharge of conditions because the information will be easily identifiable from the decision notice. Also, the number of overall queries from the public will reduce significantly.

### Development Industry

7.609 This will provide clarity to developers and stakeholders by identifying the complete content of a planning permission on the decision notice, therefore they will know exactly what plans they are working from, what conditions apply and whether details required by conditions have been agreed, and if so what these details are.

7.610 Should developers work in a number of local authority areas, they will benefit from consistency in which the way LPAs share information regarding the current status of conditions.

7.611 Prospective purchasers will not need to make an enquiry to the local planning authority and will not have the costs associated with this as they can check position of the application themselves. The development industry will achieve a potential saving of £750,000.

### The Community

7.612 Members of the public would be able to see for themselves the decision notice containing the relevant plans and conditions for the development.

7.613 Members of the community would know exactly what plans are being worked to and what conditions apply.

7.614 If the LPA places the decision notice on their website it would allow members of the community to view the plans and conditions. Time would be saved by not contacting the LPA.

## **Option 3 – Issue a model decision notice template with no legislation**

### **Description**

7.615 This option would require the Welsh Government to provide a model decision notice template on how decision notices should be set out and issue or update guidance on the use of conditions in planning permissions. There would be no legislation to require compliance.

7.616 The best practice guidance would be written by the Welsh Government with a model decision notice which should demonstrate the desired decision letter format to LPAs and would include the approved plans and discharged conditions.



## **Costs**

### Welsh Government

7.617 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.618 The cost to the local planning authority would depend on whether they follow the best practice guidance and change their current standard decision notice and working practices. There would be no mandatory requirement for the LPA to change current working practices and therefore no additional costs. If they do not adopt it, costs will be equal to those identified in option 1. If the LPA does choose to adopt the new practice, the costs would be the same as option 2.

### Development Industry

7.619 If the LPA decides not to implement the guidance, the costs will be equal to those identified in option 1 and if they do they will equal the lower costs in option 2.

### The Community

7.620 If the LPA decide not to implement the guidance, the costs will be equal to those in option 1 and if they do not, they will be equal to those in option 2.

## **Benefits**

### Welsh Government

7.621 Compliance with the guidance would lead to consistency across Wales

### Local Planning Authorities

7.622 If LPAs follow the best practice guidance it would result in the benefits outlined in option 2.

### Development Industry

7.623 The benefits of option 2 will be received if best practice guidance is followed by the LPA.

### The Community

7.624 The benefits of option 2 will be received if best practice guidance is followed by the LPA.

## **Option Four – Introduction of mandatory decision notice template that records the approved plans discharge of conditions.**

### **Description**

7.625 Like option 2, this option will require that decision notices include a condition stating what plans have been approved and are updated to reflect when conditions have been discharged. However, this option will also require that LPAs draft a decision notice in accordance with a template provided in legislation by the Welsh Government.

### **Costs**

#### Welsh Government

7.626 The Welsh Government will incur the cost of drafting and providing a template decision notice which is to be used by all LPAs as required by legislation. However, this cost is likely to be modest and will be incurred at secondary legislation stage and a separate RIA will be carried out to consider such costs. All other costs will be equal to those incurred at option 2.

#### Local Planning Authorities

7.627 The costs with this option will be very similar to those identified for option 2, with the exception of the one off £1,200 cost LPAs could have incurred for drafting a new decision standard notice.

#### Development Industry

7.628 No additional costs incurred.

#### The Community

7.629 No additional costs incurred.

### **Benefits**

#### Welsh Government

7.630 Benefits as experienced at option 2.

#### Local Planning Authorities

7.631 Benefits as experienced at option 2.

#### Development Industry

7.632 In addition to the costs experienced with option 2, developers will have the advantage of receiving decision notices which are consistent throughout Wales making them easier to interpret.

## The Community

7.633 Benefits as experienced at option 2.

### **Summary and Preferred Option**

7.634 Option 1 is confusing for LPAs and, developers. The current system lacks clarity and is time consuming and potentially costly to both the developer and local planning authority when trying to ascertain when conditions have been discharged.

7.635 Whilst producing a model decision notice template and best practice guidance as suggested by option 3 is a viable option, it may not be adopted by LPAs and therefore is not likely to achieve the same consistency as introducing a requirement that decision notices must detail the approved plans and record the discharge of conditions.

7.636 Option 2 and option 4 offer similar benefits and savings. Option 2 is the preferred option as it allows greater flexibility for LPAs and to adapt decision notices to reflect best practice and would improve consistency in how decision notices are issued across Wales, providing clarity to developers and stakeholders. It also provides clarity to future developers, landowners and the community as to whether details required by conditions have been agreed. LPAs would make significant savings in terms of reduced queries and enhanced speed with dealing with any queries they receive.

*Table 7.19: Total costs for the preferred option: Option 2/4*

	<b>Existing Costs</b>	<b>Additional Saving from legislation</b>	<b>Comments</b>
Local Planning Authorities	£304,700	-£260,600	Annual Saving
Development Industry	£750,000	-£750,000	Annual Saving

7.637 The summary of cumulative costs for the Bill are set out in Annex A

## **Decision notices - Minor-material Amendments (Part 5, Section 31)**

7.638 Three options have been considered:

- Option 1 - Do Nothing, There will continue to be inconsistency in how applicants apply to make minor material amendments to planning permissions.
- Option 2 - Provide a statutory process for local planning authorities (LPAs) to determine minor-material amendments to a planning permission through Section 73 of the TCPA 1990 (Section 73).
- Option 3 - Issue guidance that recommends LPAs grant planning permissions subject to a condition that lists the approved plans and documents

### **Option 1 – Do Nothing**

#### **Description**

7.639 Under this option there would be no change to the legislation. Section 73 of the TCPA 1990 (TCPA 1990) currently allows developers and householders to apply to make minor-material amendments to existing planning permissions.

7.640 However, the evidence<sup>69</sup> shows that there is inconsistency between LPAs in how they approach such amendments. Firstly there is uncertainty on behalf of LPAs that they can entertain such changes, and secondly permissions are often granted without the LPA attaching a relevant condition to the decision notice that can be amended. This prevents applicants from making an amendment to an approved scheme in some areas, while in other areas the LPA may approve a change through an informal exchange of letters.

7.641 Retaining the current situation would result in LPAs continuing to approve minor-material amendments in an inconsistent manner potentially leading to uncertainty, frustration, wasted time and cost.

#### **Costs**

##### Local Planning Authorities

##### *Informal measures – minor material amendments*

7.642 If the LPA is willing to accept minor-material amendments through the informal means, such as the exchange of correspondence, they undertake work without recovering their costs through a planning application fee. As the process is informal, there is no data available on levels of amendments that are agreed through these means. Therefore, if it is assumed that the number of amendments approved through informal means is a quarter of the number

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<sup>69</sup> GVA Grimley [Study to Examine the Planning Application Process in Wales \(June 2010\)](#) and Independent Advisory Group, [Towards a Welsh Planning Act: Ensuring the Planning System Delivers \(June 2012\)](#)

of applications made under Section 73 of the TCPA 1990 and all LPAs allow such amendments, they are losing the following income.

- 22 informal changes x £166 x 25 LPAs = £91,300 in potential lost income

7.643 In addition, where amendments to an existing planning permission are dealt with in an informal manner by the LPA, the lack of a formal and transparent process will continue to result in a greater risk of challenge.

#### *Formal measure - Resubmission of application*

7.644 The resubmission of a full planning application will also require the LPA to reconsider and assess the information that accompanies it, and undertake any statutory requirements, such as consultation, notification etc. Some of the information and responses from consultees will be identical to the original planning application and have no bearing on the proposed amendment. They will also have to re-examine the principle of the development in addition to the amendment being sought, which the LPA will have already considered and approved as part of the original application.

7.645 Although the planning application fee covers the cost of processing and determining an application, the resources and time required to deal with such resubmissions, could be utilised more effectively within other areas of the authority's planning function.

#### Development Industry

##### *Inconsistency in approach – submission of a minor-material amendment application*

7.646 Across Wales there is an average of 995 planning applications received per LPA per year. On average Section 73 applications account for 8.7%<sup>1</sup> of applications received. There is no data that illustrates how this 8.7% is split into the three 'types' of application that can be undertaken under Section 73, these are:

- applications to extend the time limit in which to commence a permission;
- applications to vary or remove a condition; and,
- minor-material amendment applications.

7.647 It is estimated that 15% of these Section 73 applications will be for minor-material amendments. On average that is a total of 13 applications per year per LPA. With an application cost of £166 each, the total cost to make minor-material amendments a year in Wales is:

- 13 applications x £166 = £2,158 x 25 LPAs = £53,950

### *Inconsistency in approach – resubmission of application*

7.648 The current arrangements will continue, and where a relevant condition is not attached to a permission applicants will be required to submit a further full planning application to make minor-material amendments to their approved development. This generates additional costs by the payment of an additional statutory fee that may be higher than an application under Section 73 of the TCPA 1990.

7.649 Data on the number of applications resubmitted to make an amendment are not known, it is estimated that this is a quarter of those who are able to undertake a section 73 application. The average fee costs for minor applications (excluding householder) are £1,720 with the average major fee £13,900. Major applications account for 3%<sup>70</sup> of total applications on average. This ratio has been appropriately apportioned to the number of resubmitted applications with a potential total cost of £1,250,000 a year, across Wales.

### The Community

#### *Inconsistent public engagement*

7.650 Dependent of the approach undertaken by the LPA to minor-material amendments, there will be an inconsistent manner in which they undertake public engagement.

7.651 Where a LPA approves a minor material amendment through informal measures, the request made and the decision reached by the LPA will not be formally publicised. Members of the public will therefore continue to be unaware of such requests and decisions.

7.652 However, if a developer resubmits the whole application, the public have the opportunity to comment on the whole development, including the 'principle' of granting permission. If the developer is able to make a minor material change, the public have an opportunity to make comments on the change applied for under Section 73 of the TCPA 1990 but are unable to comment on the principle of the development.

7.653 The inconsistent manner in which amendments are made, and how engagement is undertaken is confusing and lacks transparency.

#### *Resubmissions*

7.654 The cost of a 'householder' application is £166; this is the same as a minor material application under Section 73 of the TCPA 1990. The supporting information for these two applications is also similar, although there is a statutory requirement for Section 73 of the TCPA 1990 applications to have a design and access statement, which is not required for householder applications.

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<sup>70</sup> Welsh Government Development Management Quarterly Statistics

7.655 There are no additional costs associated with the current procedures.

## **Benefits**

### Local Planning Authorities

7.656 The approach taken by LPAs for dealing with such amendments will continue to vary across Wales; this provides LPAs flexibility to deal with matters as they deem appropriate. However, where amendments to an existing planning permission are dealt with in an informal manner, the lack of transparent process will result in a greater risk of challenge.

7.657 If LPAs are unwilling to accept a minor material amendment through informal means or they do not attach a relevant condition to amend then they will receive the same application fee for a change to a scheme as that has already been approved. This will increase the revenue received to approximately £1,250,000 a year across Wales.

### Development Industry

#### *Inconsistency in approach – informal agreement of changes*

7.658 If the LPA is willing to accept a minor material amendment through informal means then the developer will save money as they will not be required to pay a statutory fee. There is no data available on levels of amendments that are agreed through an informal process. Therefore, if it is assumed that the number of amendments approved through informal means is a quarter the number of applications made under Section 73 TCPA 1990, and all LPAs accept informal agreements, the developer will save the following costs:

- 22 informal changes x £166 x 25 LPAs = £91,300 in saved costs, a year across Wales

#### *Inconsistency in approach – minor material amendments.*

7.659 If the permission is granted subject to a relevant condition the developer is able to submit a minor-material change. This application fee is significantly less than the cost of resubmitting the whole application. Based on the data in option 1 above, if a developer is able to undertake a Section 73 application, and all LPAs attach a relevant condition, they will have savings of approximately £1,158,700 a year across Wales over resubmitting an application.

### The Community

7.660 Where the LPA requires the re-submission of a full planning application, or an appropriate condition allows the submission of a minor-material amendment application, formal notification and consultation, as set out in The Town and Country Planning (Development Management Procedure) (Wales) Order

2012, must be adhered to. This enables the public to obtain details of such applications or the associated decision notices, and also provides an opportunity to engage in the process.

- 7.661 However, members of the public may be informed or consulted on applications that may be of limited interest to them, as they may relate to amendments that are minor in nature, and are unlikely to have an impact on them.

## **Option 2 – provide a statutory process for LPAs to determine minor material amendments to a planning permission through Section 73 of the TCPA 1990.**

### **Description**

- 7.662 This option would see all planning permissions granted subject to a deemed condition that the development is carried out in accordance with the approved plans and documents listed in the decision notice.
- 7.663 A deemed condition is not reliant on the LPA attaching it to the decision notice as it automatically applies to all planning permissions granted. This will mean that all developers and householders will be able to utilise the provisions of Section 73 of the TCPA 1990 to make amendments to an existing permission.
- 7.664 This will provide consistency in how minor material amendments are considered by LPAs and reduces the burden on applicants in having to reapply for permission.

### **Costs**

#### Local Planning Authorities

##### *Lost income – resubmission*

- 7.665 A further full planning application will no longer need be needed to make minor-material amendments. As a minor-material application has a flat fee of £166, the procedure will results in lost income to the LPA. Taking the estimated number of resubmitted applications from above, and assuming that currently all LPAs do not attach a relevant condition, the potential lost income across Wales is approximately £1,158,700 a year.
- 7.666 The potential loss in income should be viewed in relation to current LPA practices and the work undertaken to determine the application. As some LPAs already list the approved plans, allowing minor material amendments, they will have no loss of income. Importantly, as the amendment is to an existing and approved application, the fee level should be proportionate to the change and not the original application.



### *Additional resources – minor material amendment applications*

- 7.667 The evidence<sup>71</sup> suggests that a new procedure will lead to an increase in applications for minor material amendments. The increase in applications will lead to an increase in processing cost for LPAs.
- 7.668 Where an application is sought to make a minor-material amendment to an existing planning permission, the proposed procedure will be less resource intensive than to reconsider a full application. There will be less procedural requirements to administer and less information to evaluate in determining such an application. To reflect this streamlined procedure, the proposed flat rate fee is considered more proportionate for determining applications for amendments that are minor in nature.
- 7.669 The proposal facilitates an existing procedure, by ensuring all applicants can make a minor-material application under Section 73. The existing fee for this application is designed to allow LPAs to recover the costs associated with its determination. Therefore the cost to determine additional applications will be offset by the increase in planning application fees received.

### Development Industry

#### *Inability to make informal changes to permissions*

- 7.670 Where amendments to an existing planning permission are dealt with in an informal manner by the LPA, it is understood that no fee is charged for the consideration of such changes. The new procedure will require applicants to pay a flat rate fee for making such amendments.
- 7.671 There is no data available on levels of amendments that are agreed through an informal process.
- 7.672 Therefore, if it is assumed that of the number of amendments approved through informal means is quarter the number of applications made under Section 73 of the TCPA 1990 the developer will experience the following application costs.
- 22 additional applications x £166 x 25 LPAs = £91,300 in additional costs a year, across Wales
- 7.673 This fee is necessary to support a more formal and robust process for making and determining applications, which in turn will ensure that they are determined in a more structured, transparent and consistent manner across Wales. A more formal and robust process will however benefit applicants by providing greater certainty and clarity about the process and timescales for approving such applications. It will also reduce the potential risk of challenge

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<sup>71</sup> GVA Grimley [Study to Examine the Planning Application Process in Wales \(June 2010\)](#) and Independent Advisory Group, [Towards a Welsh Planning Act: Ensuring the Planning System Delivers \(June 2012\)](#)

to the approach taken by the LPA, or to their eventual decision, which again provides greater certainty and avoids potential costly delays for applicants.

## **Benefits**

### Local Planning Authorities

7.674 The Section 73 procedure is a proportionate approach to the approval of minor-material amendments in comparison to requiring a full planning application. With fewer procedural requirements to administer and less information requirements to evaluate, the proposed procedure will reduce unnecessary time and expense for LPAs. This will allow LPAs to reallocate resources to other planning applications, which may be more complex and have significant impacts.

7.675 Where an informal approach is taken by the LPA, the proposals will introduce a procedure, which will reduce the potential risk of challenge to the approach or decision of the LPA.

### Development Industry

7.676 The procedure will provide a consistent approach to the process by which such amendments can be made to existing permissions. The minor-material amendment process has less procedural and information requirements than a resubmission of a planning application and avoids the need to revisit the principle of the development. This in turn will reduce unnecessary delay, uncertainty and expense.

7.677 A more streamlined application process will also allow businesses to respond and adapt more efficiently, quickly and cost effectively where they need to make an amendment to an existing permission. Based on the data in option 1 above, a developer can undertake an amendment application, instead of resubmitting an application, and it is assumed all LPAs previously did not attach a relevant condition; there will be savings of approximately £1,158,700 a year across Wales.

### The Community

7.678 Under the proposed procedure there is an increase in transparency when a change to a scheme is proposed.

7.679 The proposed procedure in comparison to a further full application will introduce a more proportionate approach to consultation. This is considered necessary given that the amendments sought will be minor in nature, and that the requirements for consultation and publicity will already have been undertaken in relation to the original planning application.

7.680 Where an informal approach is taken by the LPA, the proposed procedure will provide greater transparency to the public on how decisions on applications for minor-material amendments are dealt with. It will also enable the public to gain easier access to details relating to such applications.

**Option 3 – Issue guidance that recommends LPAs grant planning permissions subject to a condition that lists the approved plans and documents.**

**Description**

7.681 The Welsh Government issued a circular on the use of conditions in planning permissions. This could be updated to address good practice in relation to granting planning permissions subject to a condition all approved plans or documents must be listed. The attachment of a condition that lists the approved plans and documents would then allow applicants to apply for an amendment under section 73 of the TCPA 1990.

7.682 There is currently considerable variation in the manner in which LPAs issue decision notices, including how the plans are listed. Guidance cannot guarantee that all LPAs will provide a relevant condition and so provide the opportunity to amend a previous decision.

7.683 This will result in continued inconsistency between LPAs, leading to uncertainty, frustration, wasted time and cost.

**Costs**

Overall Costs

7.684 If LPAs follow the guidance all planning permissions would be granted subject to a condition that lists the relevant plans and documents. This would allow applications to be made under Section 73 of the TCPA to make a minor-material amendment. This would therefore result in the costs outlined in option 2.

7.685 These costs are based on the notion that LPAs will follow the guidance. If there is limited or partial take up of the guidance then there will continue to be inconsistency in how LPAs and developers deal with minor-material amendments. This will result in the costs set out in option 1.

Welsh Government

7.686 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

## **Benefits**

### Overall benefits

- 7.687 If LPAs follow the advice sent out in the guidance all planning permissions would be granted subject to a condition that lists the relevant plans and documents. This would allow applications to be made under Section 73 of the TCPA to make a minor-material amendment. This would therefore result in the benefits outlined in option 2.
- 7.688 These benefits are based on LPAs following the guidance. If there is limited or partial take up of this then there will continue to be inconsistency in how LPAs and developers deal with minor-material amendments. This will result in the benefits set out in option 1.

### **Summary and Preferred Option**

- 7.689 Option 1 has limited benefits and does not address the policy objective. Options 2 and 3 are similar; the major difference is that one is reliant on non-legislative means to achieve the policy objective. The legislative measure, option 2, provides certainty without any burden over and above the non-legislative measure. Taking all factors into account option 2 is the preferred option.

## **Notification of Development (Part 5, Section 32)**

### **Options**

7.690 Three options have been considered:

- Option 1 - Do nothing i.e. continue without a requirement to notify the LPA what permission is to be implemented.
- Option 2 - Require developers to notify the LPA before beginning development and, for certain developments and to display on site a notice containing details of the planning permission being implemented
- Option 3 - Encourage better monitoring of planning permissions by the local planning authority.

### **Option 1 – Do Nothing**

#### **Description**

7.691 A developer is currently not required to notify the LPA when they intend to start work on site nor clarify, where multiple permissions exist, which permission is being implemented which results in a lack of transparency and hinders effective enforcement.

#### **Costs**

##### Welsh Government

7.692 There are no cost implications of retaining the current practice.

##### Local Planning Authorities

7.693 Currently, when an enquiry or enforcement complaint is made to the LPA in relation to the commencement of a development on site, a visit is necessary to determine what works have commenced. There may be multiple live permissions in relation to a particular piece of land and the LPA may also have to contact the relevant developer to establish which permission is being implemented in order to ascertain which conditions apply, and whether a breach of planning control has occurred.

7.694 It is estimated that these checks can take on average up to an hour of enforcement officer time. This can involve visiting the site, checking the relevant permissions, contacting the developer and responding to any associated query. Other queries may be able to be solved quickly by checking document management systems or the officer may be aware of the ongoing work on site. The estimated cost is approximately between £13,400 and £23,300 a year in Wales. The costings relate to queries in relation to major developments only.

### Development Industry

7.695 Currently no costs are incurred by the developer.

### The Community

7.696 Where development commences on a site, the public can often be uncertain about what is being undertaken or, if there is more than one planning permission live, which consent is being implemented. This contributes to a lack of transparency in the existing system. In order to establish what is going on, on a particular site a member of the public may have to contact the LPA, unless they have been directly informed by the developer.

## **Benefits**

### Development Industry

7.697 The current planning system does not require developers to notify LPAs when they commence development and so they incur no cost.

### Local Planning Authorities

7.698 Once LPAs have responded to a query regarding the commencement of development on site, further queries relating to the same site can be responded to at virtually no cost.

### The Community

7.699 Such queries involve minimal effort and cost on behalf of members of the public. A short phone call and awaiting a response from the LPA is normally enough for them to be able to obtain the information they require.

## **Option 2 – Require developers to notify LPA before beginning development, and display a notice of the planning permission on site (major developments only)**

### **Description**

7.700 Before commencing a major development, developers would have to notify the LPA of their intentions, including stating which permission they intend to implement. The developer will have to display a notice on site for the duration of the works explaining to the public the extent of the works being undertaken.

### **Cost**

### Welsh Government

7.701 The cost to the Welsh Government would be the production of a template for the notification of development to be displayed on the site. This task is likely to be undertaken as part of the delivery of a suite of guidance which will be

developed for LPAs. This will provide clear instruction and will help to ensure a consistent approach by all local authorities.

- 7.702 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

#### Local Planning Authorities

- 7.703 LPAs will receive notification from developers of the commencement of development and as a result, responding to queries will be a much quicker exercise than currently. The number of queries received is also expected to decrease significantly owing to the display of notices on site describing the development being undertaken. The template will need to be made available by LPAs, although this could be simply through a link on their individual websites or to the Welsh Government website.
- 7.704 On receiving the notifications, they will have to be logged on the relevant case file as a record. This should take no longer than 10 minutes of administrative staff time. The cost per notification would therefore be approximately £2.70. On average 599 major applications are received per year in Wales, resulting in an estimate overall national cost of £1,617.
- 7.705 In Option 1, it was assumed that 1 query per week is received per LPA regarding the commencement of a major development. This option is expected to result in a significant decrease in queries. A 50 percent decrease would mean approximately 26 queries would be received per year. The time taken to deal with these queries will also decrease to an estimate 15 minutes rather than an hour. Based on an average enforcement officer hourly wage of £10.32, such queries would cost LPAs approximately £67.00 per year or £1,675 across Wales annually.

#### Development Industry

- 7.706 Extra costs to the developer are expected to be minimal. The notification of commencement of development could be submitted via email or post on a standard template which would, in the first instance, be produced by the Welsh Government.
- 7.707 The cost is comprised of time spent completing the template and displaying a site notice which has been quantified as approximately £15,000 per year throughout Wales.

#### The Community

- 7.708 The public will be able to view a notice on site to determine what planning permission is being undertaken. This option will not create additional public cost and may reduce costs by no longer having to contact the LPA for further information.

## **Benefits**

### Local Planning Authorities

- 7.709 By informing the LPA before commencing development it provides an opportunity to check whether there are pre-commencement conditions to discharge, potentially preventing breaches of conditions and the need for enforcement action, resulting in a time and cost saving.
- 7.710 As planning permission may be granted years before development actually commences, the notification will provide LPAs with information on which developments are currently active within their area, enabling them to allocate resources to enforcement monitoring more effectively.
- 7.711 LPAs in Wales will make a cost saving of £11,725 a year in total compared to the current situation (Option 1).

### Development Industry

- 7.712 Increased transparency about when development is due to commence and what permission is being implemented will result in developers receiving fewer queries from LPAs. An added benefit of increased transparency is that it may improve relationships with the local community where the development is taking place as they will feel fully informed.

### The Community

- 7.713 Posting a decision notice on site will improve transparency by informing local residents of the development being carried out on site. This should reduce the number of enquiries received by the LPA from the public.
- 7.714 The proposal to display a notice on site will raise public awareness of development taking place in their area. The notice would therefore provide some basic information as to the nature of the development, name and address of the developer etc. It would also include information such as the planning application reference number which would help interested parties obtain further information, such as any conditions that apply.

## **Option 3 – Encourage better monitoring of planning permissions by the local planning authority.**

### **Description**

- 7.715 This option would rely on guidance to encourage closer working relationships between building control and planning departments so that the planning department is informed when development commences. It would also involve officers being proactive by regularly conducting visits to sites where live permissions exist to establish whether development has commenced or not, and if it has, determine which permission is being implemented.



Commencements would have to be recorded so that queries from members of the public could be responded to quickly.

- 7.716 As there would be no statutory requirement for monitoring, there would be less consistency across LPAs.

## **Cost**

### Welsh Government

- 7.717 The Welsh Government would issue guidance that recommends LPAs have a better working relationship with their building control colleagues so that they could be better informed when development commences. Costs are set out at the end of the development management section.

### Local Planning Authorities

- 7.718 If LPAs do not follow the guidance issued by the Welsh Government they would bare the same costs as option 1. If they follow advice issued by the Welsh Government, costs to the local planning authority would be greater than those outlined in option 2 as this option would involve the LPA being more proactive in establishing whether development had commenced. Often site visits would show that development has not commenced and so follow up site visits would be required. It is not possible to quantify this cost as multiple site visits could be involved for each application. It is estimated that the proactive approach of actively looking for commencements rather than relying on public queries would result in a 50% uplift of the costs identified in option 1 i.e. £20,100 to £34,950. The Planning Officer Society Wales agrees that this 50% uplift is a realistic estimation; however, one LPA has suggested that being proactive in this way would require two full time members of staff in their locality. Other local authority areas in Wales are unlikely to have as many sites requiring continuous monitoring and so it is considered that on average one full time member of staff per LPA would be a reasonable requirement. It is likely this function would be carried out by an enforcement officer and so will cost each LPA £34,500 a year (including on costs) or up to £862,500 per year in Wales.

### Development Industry

- 7.719 If the LPA adopt a more proactive approach, the developer may experience some additional cost in terms of increased queries from LPAs. The number of queries will depend on how proactive each LPA is being. If each LPA makes one query a week then this would equate to 1300 queries a year. Assuming such queries could be responded by administration staff paid £37.50 per hour and take a maximum of 20 minutes to respond to, the estimated cost to the development industry of dealing with such queries is £16,250 per year, across Wales.

### The Community

7.720 There would be no additional cost compared to option 1. However, the lower level of transparency compared to option 2 would mean that lack of clarity would remain for members of the public.

### **Benefits**

#### Local Planning Authorities

7.721 The local planning authority would benefit from better working relationships with building control and members of the public as they became more proactive. They would also be well placed to answer queries from members of the public and be more visible to them as they would regularly be checking potential development sites for commencement works.

#### Development Industry

7.722 There would be no additional benefit to the developer.

### The Community

7.723 The public would benefit from the LPA being more proactive however, the benefit and level of transparency would not exceed that of option 2 as there would not be site notices etc.

### **Summary and Preferred Option**

7.724 The “do nothing” (Option 1 lacks transparency and hinders effective enforcement.

7.725 Option 2 that is, to require developers to notify the LPA before beginning development, and display a notice of the planning permission on site for certain developments, is the preferred option. Option 2 would provide LPAs with up to date information as to which developments are currently active within their area and thus allow targeting of resources to effectively monitor developments. This option would raise the community’s awareness of development taking place in their area. Option 2 is also the most cost effective option for the LPA as it would utilise minimal resources.

7.726 Option 3 relies on issuing guidance to LPAs and their building control colleagues in the public and private sector to improve working relationships and encourage proactive behaviour. There is no statutory basis for this approach which could result in limited change. In addition the additional cost of constant monitoring of undeveloped sites with live planning permission could cost up to £862,500.

*Table 7.20: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Local Planning Authorities	£18,350	-£14,043	Annual Saving
Development Industry	-	£15,000	Annual Cost

7.727 The summary of cumulative costs for the Bill are set out in Annex A

## **Time limits specified under Section 91 and 92 (Part 5, Section 33-34)**

### **Options**

7.728 Three options have been considered:

- Option 1 - Do nothing, if a local planning authority does not specify a time limit for an application, time limits are set by Section 91 or 92 of the Town and County Planning Act 1990 (TCPA 1990) when an application is amended through Section 73 of the TCPA 1990.
- Option 2 - Provide certainty through legislation over the time limits that are set by Section 91 or 92 of the TCPA 1990 when an amendment is made through Section 73 of the TCPA 1990.
- Option 3 – issue guidance over the interpretation of the legislation.

### **Description**

#### **Assessment of Options**

7.729 The options below are technical in nature and serve to provide procedural certainty, there are no anticipated associated costs.

7.730 The current situation allows an applicant to apply for a different time limit for implementing permission and enables the local planning authority to specify a time limit it considers appropriate given the local context of the development. The amendment provides a technical change that clarifies the time limit that should apply if a local planning authority has relied on the deemed condition as applied by Section 91 or 92 of the TCPA 1990. The deemed condition applies to a planning permission where the LPA have not specified a time limit in the decision notice.

#### **Option 1 – Do Nothing**

7.731 Under this option there would be no change to the legislation. Section 91 or 92 of the TCPA 1990 specifies how the time limit in which development must be commenced should apply to a planning permission. Under this section, if a local planning authority fails to specify a time limit it considers appropriate, the time limit set by Section 91 or 92 is deemed to apply to that permission. Although there is case law on how the deemed time limit should be applied to applications to make amendments under Section 73 of the TCPA 1990, there is still inconsistency in practice over how the matter is dealt with.

7.732 Under the current legislation some authorities will automatically grant a renewal when an application is granted under Section 73 of the TCPA 1990 while others may only grant the new permission subject to the remaining time of the original permission. This provides no certainty to the public and developer over what time limit should apply when an application is amended under Section 73 of the TCPA 1990.

**Option 2 - Provide certainty through legislation over the time limits that are set by Section 91 or 92 of the TCPA 1990 when an amendment is made through Section 73 of the TCPA 1990**

7.733 This option would amend the legislation, to reflect the case law to state that the time limit that applies when an application is granted under section 73 of the TCPA 1990 is the time limit for the original permission. This would provide clarity over what time limits are set by Section 91 and 92 of the TCPA 1990 when planning permission is granted under Section 73 of the TCPA 1990. This option will still allow an applicant to apply to amend the time limit on a permission and permits the local planning authority to specify a different time limit if it considers it is appropriate. The legislation means that the time limit will only be applied where the local planning authority have not specified a specific time limit for the permission.

7.734 This would give certainty to the public, developers and local planning authority over the time limit that is specified by the legislation, but retains the flexibility for developers and LPAs to respond to local circumstances.

**Option 3 - issue guidance over the interpretation of the legislation**

7.735 The Welsh Government would issue guidance on applying time limits when granting an amendment to a permission under Section 73 of the TCPA 1990. Guidance cannot however amend the legislation to apply the relevant time limit when a deemed condition applies. Ultimately interpretation of legislation is a matter for the courts.

7.736 There is currently considerable variation in the manner in which LPAs specify the time limit when granting an amendment under Section 73 of the TCPA 1990. Guidance cannot guarantee that LPAs will be consistent in the application of time limits to applications, resulting in continued uncertainty for developers and the public.

**Summary and preferred option**

7.737 Option 1 provides no legislative change, and therefore there is still inconsistency over how time limits apply to permissions under Section 73 of the TCPA 1990. Option 3 would assist in giving clarity to how a time limits should apply, but it cannot amend the legislation to specify the relevant time limit when a deemed condition applies. Option 2 is the preferred option as it reflects case law and retains the flexibility applicants and LPAs have over time limits in the current legislation, but will provide certainty over the condition that is applied automatically.

## **Planning Committees**

### **(Part 5, Section 37)**

#### **Options**

7.738 Three options have been considered:

- Option 1: Do nothing i.e. allow LPAs to set the size of their planning committee.
- Option 2: Restrict the number of members that can sit on a LPA planning committee.
- Option 3: Issue guidance encouraging LPAs to limit the size of its planning committee.

#### **Option 1: Do nothing**

##### Description

7.739 Option 1 would continue the existing practice whereby each local planning authority decides the size of its planning committee.

#### **Costs**

##### Welsh Government

7.740 As no legislative changes would be required or any guidance produced, there would be no financial consequences for the Welsh Government.

##### Local Planning Authorities

7.741 Planning Committees in Wales vary considerably in size from 11 Members in Merthyr Tydfil County Borough Council and Newport City Council to Neath Port Talbot County Borough Council which operates the largest single planning committee consisting of 46 Members.

7.742 All 72 members of Swansea City Council are members of the planning committee. It is the sole LPA in Wales operating area planning committees (35 and 37 members) in addition to a strategic planning committee (72 members).

7.743 Whilst there is no publicly available data with regards to the cost of operating a planning committee in Wales, the costs in the table below have been estimated based on number of Members on the committee, a minimum LPA staff presence and their associated cost (per meeting):

Table 7.21

LPA	No of Members	Estimated Staff & Member Cost (includes on-costs)
Merthyr Tydfil CBC & Newport City Council	11	£840
Neath Port Talbot CBC	45	£1,942
City of Swansea		
- Strategic Development Management and Control Committee)	72	£2,807
- Area 1	35	£1,614
- Area 2	37	£1,678
		<b>£6,099<sup>72</sup></b>

7.744 These illustrative figures demonstrate the variation in costs between existing LPA committees. LPAs which operate planning committees that consists of all or a large number of the elected Members will continue to incur significant costs per meeting.

### Development Industry

7.745 Large committees can be slower and inconsistent when making decisions, contributing to delays in the planning process. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy. The costs to the UK economy associated with delays in the planning system are referenced in 'costs of delay to the development industry' section above.

## **Benefits**

### Welsh Government

7.746 This option would not give rise to any benefits to the Welsh Government in terms of improved performance.

### Local Planning Authorities

7.747 Members who form part of planning committees consisting of all elected Members, or part of a committee that would exceed the recommend size, would retain their influence in the planning application decision making process.

7.748 However an opportunity to create consistency throughout Wales at Planning Committees to improve the decision making-process would be lost.

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<sup>72</sup> Estimated total staff cost to the LPA when all 3 planning committees meet during a calendar month

7.749 Additionally, the role of the local member in the planning process becomes more constrained at those authorities with larger planning committees. This is due to the protocols that govern members who sit on the committee, especially in relation to the issue of pre-determination. Members must not put themselves in a situation to be accused of bias (having a closed-mind) when it comes to their role as decision-maker. Furthermore, whilst Members have a responsibility to their constituents, in their role as a member of the planning committee, their overriding duty is to the whole County.

#### Development Industry

7.750 Delays and inconsistency in the decision making process would remain and consequently there are no benefits to this sector.

### **Option 2: Restrict the number of members that can sit on a LPA planning committee**

#### Description

7.751 Option 2 will provide the power through the subordinate legislation to prescribe the size and composition of planning committees to achieve a more consistent approach in terms of how planning committees operate and their size.

7.752 The intention is to implement recommendation 5 of the report “Study into the Operation of Planning Committees in Wales”<sup>73</sup>, which states “legislation should be introduced to define the size of the planning committee:

- to a minimum of 11 members and a maximum of 21 members (but no more than 50% of the authority members, excluding National Park Authorities);
- to avoid having all ward members (where wards have more than one elected member) sitting on the committee in order to allow some members to perform the representative role for local community interests;
- introduce a quorum for decision-making which should be a minimum of 50% of the committee (rounded up where an odd number); and
- the use of substitute members should not be allowed.

#### **Costs**

#### Welsh Government

7.753 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

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<sup>73</sup> RTPI Cymru. [Study into the Operation of Planning Committees in Wales. Final Report. Fortsimere Associates with Arup. July 2013](#)



## Local Planning Authorities

7.754 It is estimated that LPA staff and Member costs for a planning committee, based on the maximum and minimum numbers stated in paragraph 7.737, would be between £840 (11 Member committee) and £1,162.10 (21 Member committee) respectively per meeting.

7.755 The table below illustrates the potential savings (in respect of Member costs per 2 hour meeting) that could be achieved by the LPAs by implementing the proposed changes to the size of their planning committee:

*Table 7.22*

LPA	Existing No of Members	Proposed Min No of Members	Proposed Max No of Members	Existing Estimated Staff Cost	Proposed Min No of Members - Saving	Proposed Max No of Members - Saving
Merthyr Tydfil CBC & Newport City Council	11	11	21	£840	+£0.00	-£323
Neath Port Talbot CBC	45	11	21	£1,942	+£1,102	+£807
City of Swansea - Strategic Development Management and Control Committee)	72	11	21	£2,807	+£1,968	+£1,645
- Area 1	35	11	21	£1,614	+£774	+£451
- Area 2	37	11	21	£1,678	+£839	+£516
				£6,099 <sup>74</sup>	+£3,581 <sup>75</sup>	+£2,612 <sup>76</sup>

7.756 Provision has been made to enable local authorities (should they choose) to delegate decision-making powers to sub-committees. Area-based committee structures, such as that operated by the City and County of Swansea Council, could therefore continue. However, the size and make-up of those committees/sub-committees will have to comply with the prescribed requirements to be detailed in the regulations.

7.757 Whilst it is noted that potentially the cost of the planning committee could slightly increase at those LPAs who currently operate within the proposed parameters and choose to increase their committee size to the maximum

<sup>74</sup> Estimated total staff cost to the LPA when all 3 planning committees meet during a calendar month

<sup>75</sup> Estimated total staff cost saving to the LPA when all 3 planning committees meet during a calendar month

<sup>76</sup> Estimated total staff cost saving to the LPA when all 3 planning committees meet during a calendar month

permitted under the regulations (maximum of 21), this would not result in any additional financial cost to the LPA.

7.758 The costs shown in the table are based on the cost of Member and LPA staff time, calculated using their salaried hourly rate. The salaries paid to Members and LPA staff are a fixed cost to the LPA and would not be affected by the proposed changes.

7.759 Whilst the table illustrates potential savings, implementing the proposed changes to the size and make-up of planning committees would not result in a tangible monetary saving to the LPA. The saving that could be achieved is in respect of Member and officer/staff time and resources could be utilised elsewhere on other Council areas of interest and Member involvement in community activities in their role as a local representative.

7.760 Each LPA will be required to amend the relevant sections of their constitution to take account of the proposed changes to planning committee structures. It would be anticipated that this would normally be an agenda item in a routine council meeting and hence not impose an additional cost.

#### Development Industry

7.761 Implementing the proposed changes would have no direct monetary cost to this sector.

#### **Benefits**

#### Welsh Government

7.762 Smaller planning committees are likely to provide a consistent, fairer, more transparent planning service. They will facilitate a culture of better informed evidence-based decision making through the creation of an informed group of councillors with the necessary skills and knowledge. This will improve consistency across Wales.

#### Local Planning Authorities

7.763 Planning committee sizes and LPA resources vary. However, prescribing the number of Members who can be part of the committee will reduce cost and administrative overheads, particularly at LPAs whose planning committees exceed the suggested size/composition requirements. Reducing the size of planning committees will release those Members who no longer form part of the committee. Large committees result in an in-efficient use of councillor resources by compulsory attendance at committees and related tasks such as attending site visits and reading reports.

7.764 The RTPi research acknowledged the tension between the role of Members upholding the wider public interest versus the role of the local Member

representing the views of the community<sup>77</sup>. Reduced committee sizes will enable Members who no longer form part of the planning committee to preform the representative role for local community interests and therefore enhance the democratic process. Councillors acting as community representatives are vital to the planning process.

7.765 Decisions will also be more democratic through a reduction in political tensions around debating and voting that can occur at larger committees where votes may be on political lines. The RTPI research showed that a large committee was felt by some to be unwieldy and did not allow for the full engagement of all committee members in the debate<sup>78</sup>.

7.766 Member training would be more focused resulting in well trained and robust committees who have the knowledge and understanding of planning issues enabling them to make more informed decisions in the public interest.

### Development Industry

7.767 The creation of smaller, well-trained committees who have the knowledge and ability to debate and assess complex development proposals to make well informed decisions in a timely manner will be of significant assistance in addressing some of the delays in the existing system which contributes towards the costs outlined in paragraph 7.4.

### The Community

7.768 The public will also benefit from clearer demarcation of roles and responsibilities of Members whether representing local interests or the wider public interest.

7.769 Greater consistency in committee membership through the introduction of a quorum will also contribute towards improved consistency in decision making. With larger committees, particularly where the planning committee comprises of all Council members, its make-up can therefore vary considerably from one meeting to another, which can result in inconsistency in decision making.

## **Option 3: Issue guidance encouraging LPAs to limit the size of planning committees**

### Description

7.770 This option would depend on the production of national guidance which promotes best practice on planning committees procedures including committee size. It would not be mandatory to follow the guidance.

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<sup>77</sup> RTPI Cymru. [Study into the Operation of Planning Committees in Wales](#). Fortismere Associates with Arup. 2013. Page 42

<sup>78</sup> RTPI Cymru. [Study into the Operation of Planning Committees in Wales](#). Fortismere Associates with Arup. 2013. Page 55.

## **Costs**

### Welsh Government

7.771 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.772 The LPA would incur a small administrative resource cost in respect of amending the relevant sections of their Constitution, as in option 2 should they decide to take account of the guidance and this would also result in the cost savings referred to in table 7.22.

### Development Industry

7.773 Issuing guidance would have no direct monetary cost to this sector.

7.774 However, considerable inconsistency between authorities in the size of committees and committee procedures would continue. The associated cost to this sector would remain as set out in option 1.

## **Benefits**

### Welsh Government

7.775 By following this option the Welsh Government would not incur the costs associated with producing the secondary legislation required to implement option 2. However, procedural guidance on the delivery of the proposals will need to be developed for LPAs. Costs are set out at the end of the development management section.

7.776 Guidance would not be mandatory and is therefore unlikely to result in the desired outcome i.e. achieving a consistent approach in terms of planning committee size and procedures.

### Local Planning Authorities

7.777 LPAs would retain control over the size and make up of their planning committee. The criteria contained within any guidance would not be mandatory and therefore each LPA could decide whether to implement the policy (in full or in part) or to make no changes to their committee size/make-up/procedures.

## Development Industry

- 7.778 The benefits to this sector would depend on whether, and how, the LPAs reformed their committee composition as a result of the guidance. Inconsistency and delays outlined in paragraph 7.4 would likely remain as the guidance would not be mandatory and with no requirement for LPA's to reform their committee structure or processes.

## **Summary and Preferred Option**

- 7.779 Option 1 does not change the existing arrangements, so inconsistency and potential delay within the decision making process would remain. The retention of large planning committees would result in the continuation of unnecessary demands on scarce Member resources, requiring attendance at committees and the time needed to consider the agendas. It can also prevent the valuable role that members can play in the planning process by stopping them from taking a proactive role in planning applications that affect their constituents, given the protocols that govern Planning Committees.
- 7.780 Irregular attendance at larger committees would continue to impact upon the consistency of decision-making. In addition, it can also lead to less 'democratic' voting with greater importance being placed on the views of the local Member and the political tensions that can exist around debating/voting rather than fully assessing the merit of the application.
- 7.781 Option 3 is the publication of guidance that would recommendation limits on the size and make-up of planning committees. This could potentially assist in achieving consistency across Wales; however, this option would rely upon LPAs conforming with the guidance on a voluntary basis, which cannot be guaranteed.
- 7.782 Option 2, which is the preferred option, allows Welsh Ministers to prescribe the size and make-up of planning committees to ensure greater consistency across Wales. This will ensure that smaller planning committees operate across Wales in creating a robust core of well trained Members with a clearly defined role of representing the wider public interest. This will lead to a better culture of informed evidence-based decision making and providing a consistent, fairer, more transparent planning service throughout Wales. The introduction of a quorum for decision making will also ensure greater consistency in committee membership which will consequently improve consistency in decision making.
- 7.783 Smaller, well-trained committees would also benefit the development industry by having the skills, knowledge and continuity of membership to make well-informed and consistent decisions in a timely manner, which will be of significance in addressing delays in the development process.
- 7.784 Additionally, there is an opportunity to enhance the Members role as a local representative. Those Members who are not planning committee members can therefore become more involved in planning applications that affect their

constituents including taking up a campaigning role. In this role they may express support for a particular opinion in advance of the matter being considered by the planning committee and campaign in accordance with the opinion without the threat of predetermination.

## **National Scheme of Delegation (Part 5, Section 37)**

### **Options**

7.785 Three options have been considered:

- Option 1 – Do nothing i.e. retain local discretion on delegation
- Option 2 – Introduce a mandatory national scheme of delegation
- Option 3 - Provide a national model scheme of delegation to be used by LPAs (which is not mandatory)

7.786 Option One – Do Nothing

### Description

7.787 Option 1 would continue the existing practice whereby each local authority prepares its own scheme of delegation.

### **Costs**

#### Welsh Government

7.788 As no legislative changes would be required or any guidance produced, there would be no financial outlay to the Welsh Government.

#### Local Planning Authorities

7.789 This option would allow the LPAs to carry on with their existing delegation arrangements and therefore there would be no additional costs imposed on them.

7.790 In terms of current costs, a benchmarking exercise between Councils in England in 2012 found that the average cost to an LPA for taking an application to Planning Committee was £1,188 and the average costs for decisions made by officers under delegated powers was £530 (PAS/CIPFA benchmarking planning services exercise, 2012). These costs include the time spent on the activity, the cost per hour of the person carrying it out and an allocation of overhead cost to the activity.

7.791 Whilst there are no costs available specifically in relation to Wales, it is reasonable to assume that these figures are comparable to costs incurred in the Welsh system due to the similarity in processes and procedures between the two countries.

7.792 Table 7.23 below provides a breakdown of the costs provided by the research. A GDP deflator adjustment factor of 1.06% has been applied to the 2012 figures to estimate the average costs for 2014.

*Table 7.23 - Cost per application split between Delegated Decision and Committee Decision (costs not related to development type).*

	<b>2012</b>	<b>2014</b>
Average Delegated decision		
Receipt & validation, fees	£81	£82
Consultation & evaluation	£314	£317
Delegated reports & decision	£135	£136
<b>TOTAL</b>	<b>£530</b>	<b>£536</b>
Average Committee decision		
Receipt & validation, fees	£81	£82
Consultation & evaluation	£314	£317
Delegated reports & decision	£793	£801
<b>TOTAL</b>	<b>£1,188</b>	<b>£1,201</b>

7.793 The research suggests that it costs on average over twice as much to process an application that is presented to a planning committee compared to an application determined under delegated powers.

### Development Industry

7.794 Some small-scale development proposals, involving small residential and commercial projects, and extensions would continue to be determined by Planning Committee at those LPAs with restrictive delegation schemes leading to delay and uncertainty caused by the committee process.

7.795 Whilst it is difficult to estimate the exact cost, delayed planning decisions place a significant financial burden on developers and the Welsh economy. The costs to the UK economy associated with delays in the planning system are referenced in paragraph 7.4.

## **Benefits**

### Welsh Government

7.796 This option would not give rise to any benefits to the Welsh Government in terms of improved performance.

### Local Planning Authorities

7.797 The degree of delegation to officers would remain at the discretion of the Members of the local authority.

- 7.798 The delegation schemes can continue to reflect local circumstances and be amended when deemed necessary. An opportunity to add greater consistency throughout Wales in respect of the decision making–process would be lost.

### Development Industry

- 7.799 Delays and inconsistency in the decision making process would remain with small-scale development which can be more efficiently considered under delegated arrangements continuing to be determined in some instances by committee. Consequently there are no benefits to this sector.

## **Option Two: Introduce a mandatory national scheme of delegation**

### **Description**

- 7.800 Under this option there would be a power for the Welsh Ministers to use subordinate legislation to introduce a mandatory national scheme of delegation which would deliver greater consistency and efficiency nationally in the decision-making process. A national scheme of delegation will be prescribed so that, the same type of planning application is dealt with in the same way (i.e. by committee or delegation) across Wales. Planning committees should not be concerned with small-scale, non-controversial development proposals which can be more efficiently considered under delegated arrangements.
- 7.801 The national scheme of delegation would capture all types of applications for planning permission and applications for the approval of reserved matters made under Part 3 of the TCPA 1990. Other functions (such as discharging planning conditions, enforcement etc.); are to be left to each individual authority to decide. For this reason, it is envisaged that the national scheme of delegation would only form part of the authority's constitution.
- 7.802 The scheme will be structured following the “by exception” approach, where LPA officers are given the power to determine all planning applications unless they fall into defined exceptional categories that are listed in the scheme.

### **Costs**

#### Welsh Government

- 7.803 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.
- 7.804 The effectiveness of the national scheme of delegation in providing greater consistency and efficiency would be monitored as part of the existing Welsh Government Planning Performance Framework and would not therefore result in any additional cost to the Welsh Government.



### Local Planning Authorities

- 7.805 Each LPA will be required to amend the relevant sections of their constitution to take account of the changes to the delegation scheme. It would be anticipated that this would normally be an agenda item in a routine Council meeting and not impose an additional cost.
- 7.806 There would be no additional costs to the decision making process. The number of applications submitted is not expected to change as a result of the proposal. Planning officers would continue to assess applications in the same way as at present but would not have to prepare a committee report on those applications that, under this option, would be considered under delegated arrangements (see benefits section). The cost incurred in attending the planning committee meetings to discuss the applications will also be removed. Officers already have the necessary experience of making decisions on applications and therefore there are no additional training costs.

### Development Industry

- 7.807 Implementing the proposed changes would have no direct cost to this sector. The introduction of a national scheme of delegation would not alter the application process that developers and home-owners currently follow when submitting a planning application.

## **Benefits**

### Welsh Government

- 7.808 The decision making process for the whole of Wales would be streamlined, with the ability to accurately record, monitor and analyse LPA performance. The introduction of a national scheme of delegation will contribute towards establishing a consistent, fairer, more transparent planning service.
- 7.809 The improvements to the speed and consistency of the planning system are also likely to benefit business confidence and could assist economic growth.

### Local Planning Authorities

- 7.810 The implementation of the proposed national delegation scheme would result in planning committees determining strategically important applications and those with a clear public or policy interest rather than small-scale development proposals which can be more efficiently considered under delegated arrangements. By defining the role and responsibility of planning committees as described, there would be a subsequent reduction in the amount of applications being determined by planning committees.
- 7.811 The research<sup>117</sup> suggests that it costs on average over twice as much to process an application that is presented to a planning committee than an application determined under delegated powers. Whilst the research does not differentiate between the cost of planning committees determining a major application and a minor application (the applications targeted by the proposed

national delegation scheme), it is reasonable to predict that by implementing the proposed national scheme of delegation and subsequently reducing the amount of applications that would be determined by planning committees, there would be a cost saving for LPAs.

- 7.812 A reduction in the amount of applications being determined by committee should also result in shorter committee meetings. Currently, the length of committee meetings varies significantly, from an average of 32 minutes for Merthyr Tydfil to an average of 240 minutes for Brecon Beacons National Park Authority<sup>79</sup>, despite less than 3% of overall applications submitted to LPAs being major applications.
- 7.813 Reducing the length of committee meetings would also result in a resource opportunity by enabling Members and staff (who participate at planning committee meetings) to utilise any saved time on other Council business.
- 7.814 Greater delegation would also result in an increase in the proportion of decisions made within the target period for determination, therefore reducing delays in the current system. Planning Committee meetings are typically once a month with reports for each meeting prepared up to 3 weeks in advance. Whilst an LPA may have all the relevant information to determine an application, they are unable to issue a decision due to having to wait for the next available committee. Increasing delegated powers would remove this delay with officers being able to determine all applications that fall within the national scheme at any point once the LPA has all the relevant information to make a decision.
- 7.815 Additionally, the adoption of a national scheme would ensure that all LPAs have a scheme of delegation and lifts the burden of each LPA having to keep schemes updated.

#### Development Industry

- 7.816 Whilst the proposed scheme is likely to include a degree of local discretion on particular provisions, it will set a minimum level of consistency which will create greater certainty and consistency for applicants and developers, particularly those who operate over several local planning authority areas.
- 7.817 There would be a reduction in delays and the associated costs incurred as a result of small-scale/non-controversial applications being held up in the planning committee process. Enabling such applications to be determined by officers and not having to wait for a planning committee meeting will result in faster decisions.

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<sup>79</sup>RTPI Cymru. [Study into the Operation of Planning Committees in Wales. Fortismere Associates with Arup](#). 2013. Table 1: Planning Committee meetings by local planning authority 2012/13. Page G2

## **Option Three: Provide a national model scheme of delegation to be used by LPAs (which is not mandatory)**

### **Description**

- 7.818 A national model scheme of delegation would be produced with associated guidance which LPAs could adopt in its entirety or use as a foundation in preparing their own delegation schemes.
- 7.819 Whilst preparing a model scheme may help to achieve a more consistent approach to delegation it would not provide the consistency due to the continuing variations among LPAs.
- 7.820 Existing guidance already encourages LPAs to delegate planning functions where possible. Appendix A of Welsh Office Circular 29/95 outlines best practice in handling planning applications and endorses the best practice guidance published by the National Development Control Forum ("*Guidelines for the handling of planning applications*", February 1988), Audit Commission ("*Building in Quality: A Study of Development Control*", 1992) and the Welsh Office ("*Development Control – A Guide to Good Practice*"), all of which advocate delegating planning decisions to officers where possible, with only complex and controversial planning applications being decided by committee. Despite this guidance there remain authorities in Wales with low delegation rates and instances of minor applications being reported to planning committee.

### **Costs**

#### Welsh Government

- 7.821 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

#### Local Planning Authorities

- 7.822 Should an LPA select to take account of the model scheme, amendments to their constitution would be required as in Option 2. As with option 2, this option is not expected to generate any additional costs for determining applications and, depending upon how many planning authorities adopt the model scheme, may generate cost-savings.

#### Development Industry

- 7.823 Issuing guidance would have no direct cost to this sector. The considerable inconsistency between authorities in the level of, and conditions under which, decisions are delegated to officers would continue and therefore the delays and uncertainty in the planning system, and the resultant costs to the economy outlined in option 1, would remain.

## **Benefits**

### Welsh Government

7.824 Guidance already advocates delegating planning decisions to officers where possible, with only complex and controversial planning applications being decided by committee. However, there are considerable inconsistencies across Wales and delegation rates remain low at many LPAs with regular instances of minor applications, such as householder development, being reported to planning committee. There are marginal benefits if some authorities adopt the model scheme but these are unlikely to be as high as for a mandatory scheme.

### Local Planning Authorities

7.825 LPA's can adopt the model scheme of delegation and make additional provision for types of development they consider being of local significance. Only these applications should only be determined by the planning committee. Delegation schemes could also be amended at the discretion of the Council to respond to any change in the type of development in the locality. However the level of inconsistency across Wales would remain and delays in the planning system would continue.

### Development Industry

7.826 Inconsistency and delays in the Welsh planning system would remain as there would be no requirement for LPA's to amend their delegation schemes in accordance with the national model.

7.827 The benefits depend upon how many LPAs adopt the non-mandatory scheme. If all LPAs adopt the scheme in its entirety, then the benefits will be the same as Option 2. If no LPAs adopt the scheme, then the result will be the same as Option 1.

### Summary and Preferred Option

7.828 There is a strong evidence base for change.<sup>80</sup> Delegation of decision making to officers has benefits for all stakeholders in terms of simplifying procedures, minimising costs and freeing up committee members to concentrate on major or controversial cases. It removes applications which typically elicit no Member discussion and evaluation at committee whilst clarifying the system and protecting member involvement. Where there is no need to await a committee decision, time can be saved in dealing with a planning application. Delegation is therefore a positive process that gives benefits not just in terms of streamlining internal procedures but also in terms of improved responsiveness for applicants.

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<sup>80</sup> RTPI Cymru. [Study into the Operation of Planning Committees in Wales. Final Report. Fortsimere Associates with Arup. July 2013](#)

7.829 Option 1 would see no changes to the existing arrangements. Inconsistency would continue and the role of the planning committee would remain unchanged. Option 3 could achieve the necessary change however, as this option relies upon guidance, it would need to be adopted by all LPAs, which cannot be guaranteed. For this reason, Option 2 is the preferred option as it provides a minimum level of consistency across Wales whilst ensuring that planning committees deal with strategically important applications and those with a clear public or policy interest and not small-scale development proposals which can be more efficiently considered under delegated powers.

### Guidance

7.830 There will be a cost, through the production of appropriate guidance, explaining the changes to the development management system in Wales. These costs are estimated to be £50,000; this will be borne by the Welsh Government.

*Table 7.24: Total costs for the Development Management Section*

	<b>Existing Costs</b>	<b>Additional Cost/ Saving from legislation</b>
Welsh Government	-	£50,400
Local Planning Authorities	£442,950	-£103,643
Development Industry	£1,559,050	-£452,956
Statutory Consultees	-	£1,050

7.831 The summary of cumulative costs for the Bill are set out in Annex A

## **Enforcement and Appeals**

### **Power to decline to determine a retrospective planning application where an enforcement notice has been served. (Part 5, Section 30)**

7.832 Two options have been considered:

- Option 1 – Do nothing, retain the ability to submit a planning application after an enforcement notice has been served.
- Option 2 – Introduce a power to decline retrospective planning applications, following the service of an enforcement notice.

#### **Option 1 – Do nothing**

##### **Description**

7.833 If a developer carries out unauthorised development, it is for the LPA to decide whether the development is acceptable in planning terms. If they decide the development is unacceptable they can pursue enforcement action. However at any time, the developer can submit a retrospective planning application seeking permission to retain the development as undertaken. This acts as a delaying tactic as the enforcement proceedings are put on hold while the retrospective application is determined.

##### **Costs**

##### Welsh Government

7.834 Any appeals against an enforcement notice or a retrospective planning application are heard by the Planning Inspectorate. Potentially they could have to deal with two different types for appeal on the same development; they would hear the appeal against an enforcement notice and hear the appeal against the refusal by the local planning authority of the retrospective planning application.

7.835 Although there is no data available to determine how many 'consecutive appeals' the Planning Inspectorate receive each year, it has been estimated that this figure would be approximately 11. Based on the average wage of a Higher Technical Officer and the approximate time taken to determine an appeal, there would be a potential cost to the Planning Inspectorate of £5,752, per year.

##### Local Planning Authorities

7.836 Retaining the current system results in an inefficient use of LPA resources as officers are considering the same development twice. Once when determining if an enforcement notice should be served and secondly, if a retrospective planning application for the same site is submitted. Generally, the estimated cost to an LPA to draft and serve an enforcement notice

(excluding any investigative work) would be approximately £98<sup>81</sup> and the estimated cost of determining a retrospective planning application would be £562<sup>82</sup>.

7.837 Although it is not possible to calculate how many retrospective planning applications are submitted for a site that has already been served with an enforcement notice, we have assumed it would be approximately 120. This is based on the average number of enforcement notices served per year in Wales, 241, and assuming that 50% of these would result in retrospective planning applications. Taking into account the estimated costs of serving enforcement notices (excluding any investigative work) and retrospective applications (£98 and £562) plus costs of responding to related appeals, this means LPAs across Wales currently incur costs of approximately £46,398<sup>83</sup> per year.

### Development Industry

7.838 Should they choose, a land owner or developer, could appeal against an enforcement notice and at the same time submit a retrospective planning application to slow down the enforcement process and provide an additional opportunity to have their development authorised. The average fee to submit a retrospective application is £322 and the average fee to appeal an enforcement notice under ground (a) is double (£644), as half the fee is paid to the LPA and the remaining half to the Planning Inspectorate. If the enforcement notice is upheld, the fee paid to the Planning Inspectorate and LPA is retained, therefore, the maximum fee for a developer if they pursue both an enforcement appeal and a retrospective application is currently £966.

### The Community

7.839 The existing system of allowing the submission of a retrospective planning application after service of an enforcement notice means that the community experience prolonged harm to the amenity of their local area. This is especially the case if the application is refused and is followed by consecutive appeals (an enforcement notice appeal is followed later by an appeal against refusal of a retrospective planning application).

## **Benefits**

### Welsh Government

7.840 There are no identifiable benefits for the Welsh Government and the Planning Inspectorate.

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<sup>81</sup> Welsh Government Research – Standard DM Team for Welsh LPAs table

<sup>82</sup> Welsh Government Research – Standard DM Team for Welsh LPAs table

<sup>83</sup> See RIA Calculations document

### Local Planning Authorities

7.841 LPAs will continue to receive fee income from retrospective applications when an enforcement notice has already been served. There are no other identifiable benefits.

### Development Industry/applicant

7.842 A developer has the opportunity to delay enforcement action by submitting a retrospective planning application after an appeal against an enforcement notice is upheld. They also have multiple opportunities to regularise their unauthorised development through an appeal against an enforcement notice, the submission of a retrospective planning application and should that be refused, an appeal against that decision.

### The Community

7.843 The community benefit by having the opportunity to make comments when a retrospective planning application has been submitted after an enforcement notice has been served.

## **Option 2 – Introduce a power to decline retrospective planning applications, following the service of an enforcement notice**

7.844 This option would allow LPAs to decline to accept retrospective planning applications where an enforcement notice has already been served to ensure the enforcement process is not delayed. Research has identified that significant local planning authority resources are committed to dealing with applications for development that has already been determined to be unacceptable<sup>84</sup> though the serving of an enforcement notice.

## **Costs**

### Welsh Government

7.845 There is a saving of £2,875 as LPAs have the power to decline to determine retrospective planning applications and therefore it is only the enforcement notice that would be appealed. Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.846 It has been estimated that currently, there are 11 cases across Wales where a retrospective planning application is submitted for the same site where an enforcement notice appeal has already been refused. With the average fee of submitting a retrospective planning application being £322, this could result in

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<sup>84</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 17



a loss of fee income for LPAs. However, not having to determine the planning applications and subsequent appeals provide savings of £31,600.

#### Development Industry

7.847 A land owner or developer would see a reduction in the number of appeal avenues they can follow in respect of an unauthorised development and therefore, must fulfil enforcement notice requirements earlier than currently.

#### The Community

7.848 There are no identifiable costs to the community regarding this option.

### **Benefits**

#### Welsh Government

7.849 Planning Inspectorate resources would be better utilised as they would only have to consider the acceptability of an unauthorised development once – either via an appeal against an enforcement notice, or an appeal against a retrospective planning application. This depending on the option the land owner / developer chooses.

#### Local Planning Authorities

7.850 This option does not prevent the submission of a retrospective planning application as applicants would still have the right to submit one, although the local planning authority would have discretion over whether to accept the application or not. A retrospective application, for example, could be accepted where it is deemed that with the imposition of conditions would achieve an acceptable form of development.

7.851 Local planning authority staff resources would be used more effectively if they are able to exercise discretion in declining to determine a retrospective application where an enforcement notice is served first, since they would not have to consider the same development twice.

#### Development Industry

7.852 There are no identifiable benefits to a land owner or developer.

#### The Community

7.853 The community can expect swifter action and a fairer enforcement system as developers who attempt to slow the appeal process down by submitting a retrospective application will not automatically have this opportunity as the local planning authority may decline to determine their retrospective application.

## Justification for 2 options

7.854 The purpose of this provision is, to prevent developers delaying the enforcement process by submitting retrospective planning applications to the local planning authority when the acceptability of their unauthorised development has already been determined. There are only two options available either to submit a retrospective application or not. There is no other realistic option.

## Summary and preferred option

7.855 The ability for a developer to submit a retrospective planning application where the same development has already been deemed unacceptable through the service of an enforcement notice creates delays and unnecessary workloads putting strain on LPA resources LPAs will retain discretion to accept retrospective applications, for example where the development could be made acceptable through the imposition of planning conditions. Option 2 is the preferred option.

*Table 7.25: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Saving from legislation</b>	<b>Comments</b>
Welsh Government	£3,577	- £2,875	Annual Saving
Local Planning Authorities	£42,716	- £31,649	Annual Saving

7.856 The summary of cumulative costs for the Bill are set out in Annex A

## **One avenue to have planning permission granted through appeal. (Part 6, Section 39, 40 and 41)**

7.857 Three options have been considered:

- Option 1 – Do nothing, retain the current appeal processes.
- Option 2 – One avenue to have planning permission granted through the appeal process, when an enforcement notice has been served.
- Option 3 - No route to planning permission through an enforcement appeal.

### **Option 1 – Do nothing**

#### **Description**

7.858 The current arrangements would be retained where multiple avenues for appeal can be used to delay enforcement including:

7.859 An automatic deemed planning application as well as an option for a developer to choose to seek planning permission during an appeal against an enforcement notice.

7.860 Multiple opportunities to submit appeals even though a previous appeal is dismissed (either in respect of an enforcement notice appeal or appeal against refusal of planning permission).

#### **Costs**

##### Welsh Government

7.861 Retaining the existing enforcement and appeals system is inefficient as more than one appeal for the same development could potentially be determined by the Inspectorate. Based on the average number of enforcement notice appeals on ground (a) per year, 29<sup>85</sup>, it is estimated that approximately 76%<sup>86</sup> are upheld and could potentially be determined a second time if a retrospective planning application is submitted and subsequently refused. This could potentially equate to a cost of £32,032 per year to the Planning Inspectorate, taking account of the number of potential 'dual' appeals (14) multiplied by the time taken and average wage of a Planning Inspectorate Higher Executive Officer to process them.

##### Local Planning Authorities

7.862 When a LPA identifies or is made aware of an unauthorised development, they are unlikely to deal with the matter until all extant appeals related to the development have been determined, which could take several months. The

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<sup>85</sup> Data provided by the Planning Inspectorate

<sup>86</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 5.2 – Table 7

LPA would, however, continue to monitor the site and respond to any queries and complaints whilst the appeal(s) are being determined.

- 7.863 This would have cost implications in terms of staff time which equates to approximately £260 per case<sup>87</sup> and based on an estimate of 11 cases where multiple appeals exist for the same development proposal, this will equal £11,341 a year across Wales.

### The Community

- 7.864 If two consecutive appeals are submitted by an appellant for the same development, it can take several months before the matter is resolved. This can have a negative impact on the community, particularly if they are directly affected by the unauthorised development and their confidence in the enforcement appeal system. It is not possible to quantify this as a monetary figure.

### Development Industry

- 7.865 As there are multiple routes for land owners to seek permission for unauthorised development, there are a number of cost implications. For example, if an enforcement notice is served, the appellant can appeal this, as well as submitting a retrospective planning application (which provides an alternative route for a development to be granted permission – should the appeal against the enforcement notice be upheld).
- 7.866 Seeking planning permission through an enforcement notice appeal, the appellant double the planning application fee which will equal £650. Half the fee is made payable to the LPA, while the other half is paid to the Planning Inspectorate. If the appeal is overturned, the Planning Inspectorate returns their portion of the fee to the applicant, although the LPA retain their portion. On average, there are 29 enforcement notice appeals per year seeking planning permission ('ground (a)') with 76% upheld. This means approximately 22 appeals are upheld and 7 are granted. Of those upheld, the land owner will have paid a total of £650, where as those which are granted, they will have paid £300 (as half is returned). Therefore, it is estimated that the average cost for developers of pursuing planning permission through an enforcement appeal including the cost of professional advice (an average of £1,800) would be £2,300<sup>88</sup>.
- 7.867 Should the applicant also wish to submit a retrospective planning application at the same time, the average cost of this would be £1,700<sup>89</sup>.

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<sup>87</sup> Data found in RIA calculations document

<sup>88</sup> See RIA Calculations document

<sup>89</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.2

## **Benefits**

### Welsh Government

7.868 There are no identifiable benefits to the Welsh Government or the Planning Inspectorate.

### Local Planning Authorities

7.869 By retaining the current system, LPAs will retain a fee income from ground (a) enforcement notice appeals of approximately £3,542 per year. This takes into account the number of ground (a) appeals heard each year (on average, 29<sup>90</sup>) and the average fee of £570 although this can vary considerably depending on the type and size of application being determined).

### Development Industry

7.870 By retaining the current system, land owners can manipulate and delay the appeal process by using more than one avenue for appeal. If this system is retained, they would continue to benefit from these 'loop holes' which can put significant strain on the resources of LPAs and the Planning Inspectorate.

### The Community

7.871 There are no identifiable benefits to the community, who would continue to be affected by delays from a confusing and slow appeals process.

## **Option 2 – Have one avenue to secure planning permission through the appeal process, when an enforcement notice has been served**

### **Description**

7.872 This option would involve:

- i) The removal of the 'deemed' appeal route to gaining planning permission by making ground (a) the only route to gaining planning permission through an enforcement appeal;
- ii) Removal of Section 174 ground (a) appeal where previously permission was refused on appeal; and
- iii) Removal of Section 78 appeal where a Section 174 appeal upheld on ground (a)

### **Costs**

### Welsh Government

7.873 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

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<sup>90</sup> Data provided by the Planning Inspectorate

7.874 The Planning Inspectorate would benefit from less staff required to consider a retrospective planning applications for sites that has already been deemed unacceptable through an enforcement notice. Based on the approximate hourly wage for a Planning Inspectorate Higher Technical Officer, the length of time it is estimated to determine an appeal and the number of 'dual' appeals for a development being approximately 11, the Planning Inspectorate currently incurs costs of £26,500 per year. By reducing the number of avenues for appeals to one, it is estimated this figure can be halved and therefore produce a cost saving of £10,472<sup>91</sup> per year.

#### Local Planning Authorities

7.875 By removing the number of avenues for appeals, LPAs could expect to see a loss of fee income of £1,900 as appellants would either appeal an enforcement notice or submit a retrospective planning application, not both. Currently, it is assumed that approximately 11 enforcement notice appeals would result in the submission of a retrospective planning application. However, the reduction in appeals means that the LPAs across Wales would save £4,100

#### Development Industry

7.876 Any land owner / developer would see a reduction in the number of appeal avenues. This would result in less expenditure on pursuing appeals and would result in a faster decision on the acceptability of the development. There will be loss of income where appeals are upheld and activities cease earlier due to the loss of multiple appeal routes. The cost savings for the development industry are set out in table 7.26.

#### The Community

7.877 There are no identifiable costs for the community associated with this option.

### **Benefits**

#### Welsh Government

7.878 The proposed changes would see a reduction in the number of consecutive appeals submitted to the Planning Inspectorate as there would only be one available avenue for an appeal, allowing for more efficient use of staff resources.

#### Local Planning Authority

7.879 As there would be a reduction in the number of avenues of appeal, delays to enforcement action will be reduced. Public confidence in the enforcement system will be increased knowing that issues already settled by an appeal will not be revisited and potentially overturned.

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<sup>91</sup> See RIA Calculations document

## Development Industry

7.880 The proposed system of allowing only one appeal route will be less confusing since there will only be one way of testing the acceptability of a development proposal.

7.881 In the situation where an enforcement notice is served after a retrospective planning application has been submitted, the appellant will still retain the option to appeal ground (a) with other grounds of appeal under Section 174 of the TCPA.

## The Community

7.882 There will be increased confidence in the appeals system as the appellant would not be able to use the appeal process to cause delay once an enforcement notice has been served by having the same issue considered twice through the submission, and possible appeal, of a retrospective planning application.

## **Option 3 – No route to planning permission through an enforcement appeal**

### **Description**

7.883 This option removes the deemed planning application or ground (a) appeal against an enforcement notice, so land owners and developers would be required to submit a retrospective planning application if they wanted the acceptability of their development considered.

### **Costs**

## Welsh Government

7.884 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

7.885 As there would be no option to seek planning permission through an enforcement notice appeal there would be an increase in the number of retrospective planning applications submitted to LPAs. There are currently, on average, approximately 1,000 retrospective applications submitted per year across Wales<sup>92</sup> and as this figure would be expected to increase by approximately 18 per year (based on the average number of appeals against enforcement notices). Given that the average time taken to determine an enforcement appeal or an appeal against the refusal of a retrospective planning application is approximately the same, this provides a cost neutral option.

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<sup>92</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.2

## Local Planning Authorities

7.886 Although this option does not provide an option for ground (a) appeal against an enforcement notice, the LPA would still have to assess a potential unauthorised development and could issue an enforcement notice. With no enforcement appeal route, the developer would be forced to submit a retrospective planning application, which again, would be determined by the LPA, resulting in them having to consider the same issue twice. Based on the average cost of determining a retrospective planning application of £560<sup>93</sup> the cost for this option would effectively be double if the same site is considered twice, totalling £1,100. This would mean that, based on the potential increase of retrospective applications, by 18 (the current average number of enforcement notice appeals), LPAs could expect to see net costs for this option of approximately £11,800, a year across Wales.

## Development Industry

7.887 Although the fee required to appeal an enforcement notice would no longer be applicable, the landowner would still have to submit a retrospective planning application to gain permission for an unauthorised development. The average cost of a retrospective planning application is £300<sup>94</sup>. There will also be potential costs to the landowner to employ the services of a planning agent. Based on the assumption that the submission of a retrospective application would generally involve relatively small development or changes of use, the range of cost would likely to be up to £2,000 per application<sup>95</sup>. This would equate to a total cost across Wales of approximately £11600 a year, which would include the costs of submitting retrospective planning applications, appeals, and the costs associated with employing the services of a planning agent.

## The Community

7.888 There are no identifiable costs associated with this option for the community.

## **Benefits**

### Welsh Government

7.889 There would be more efficient use of staff resources as the Inspectorate would not have to consider an enforcement notice ground (a) appeal and a retrospective planning application appeal for the same development. This could potentially equate to a cost saving of £17,000 per year to the Planning Inspectorate by taking account of the number of potential 'dual' appeals (14) multiplied by the time taken and average wage of a Planning Inspectorate Higher Executive Officer.

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<sup>93</sup> Welsh Government Data – LPA overheads 2013

<sup>94</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.2

<sup>95</sup> [Benchmarking the costs of applicants of submitting a planning application](#) (2009) Table 3.2



### Local Planning Authorities

7.890 There are no real benefits for LPAs as savings on appeal work are offset by a higher workload of retrospective planning applications.

### Development Industry

7.891 Although this option removes the ability to appeal under ground (a), there would still be other grounds of appeal against an enforcement notice that are available to the appellant. They also retain the option of submitting a retrospective planning application. However there are no benefits overall to the development industry.

### The Community

7.892 There will be increased confidence in the appeals system as the appellant would not be able to use the appeal mechanism to cause delay once an enforcement notice has been served by having the same issue considered again through the submission, and possible appeal, of a retrospective planning application.

### **Summary and preferred option**

7.893 The enforcement can be a long, drawn out process with land owners and developers able to manipulate the system using several options for appeal against an unauthorised development. These multiple avenues of appeal under option 1 not only impact on the resources of LPAs and the Planning Inspectorate, but also reduce confidence in the system among the wider public.

7.894 Although the overall aim is to reduce the number of avenues a land owner or developer can use to appeal, they are still entitled to a choice of how they wish to proceed, whether this is by appealing an enforcement notice under ground (a) or through the submission of a retrospective planning application. As option 2 is the only option that fully addresses these issues by promoting only one avenue for appeal, as well as allowing a choice for which avenue an appellant wishes to take, this is the preferred option.

*Table 7.26: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost/ Saving from legislation</b>	<b>Comments</b>
Welsh Government	£26,488	- £10,472	Annual Saving
Local Planning Authorities	£5,005	£4,088	Annual Cost
Development Industry	£44,110	-£21,785	Annual Saving

7.895 The summary of cumulative costs for the Bill are set out in Annex A

## **Appeals against notices in respect of land adversely affecting amenity**

### **(Part 6, Section 43)**

7.896 Two options have been considered:

- Option 1 – Do nothing, so that appeals against a notice in respect of land adversely affecting amenity continue to be heard in Magistrates Courts
- Option 2 – Such appeals to be heard by the Planning Inspectorate, rather than at a Magistrates Court

#### **Option 1 – Do nothing**

7.897 This option would see no change to current legislation, whereby appeals against a Section 215 notice in respect of land affecting amenity continue to be heard by the Magistrates' Court.

#### **Costs**

##### Welsh Government

7.898 As the Planning Inspectorate does not currently determine appeals against a Section 215 notice, there are be no costs.

##### Local Planning Authorities

7.899 Although not a mandatory requirement, LPAs may wish to attend court if an appeal is being heard against a section 215 notice they served. Based on the average number of appeals each year (5) and assuming that LPAs attend each one, it is estimated that the LPA costs preparing the appeal would be approximately £365<sup>96</sup> per year, which takes into account the number of appeals, average time taken to prepare an appeal and the average hourly wage of a planning officer. There would also be an estimated cost of £420<sup>97</sup> for the LPA if a solicitor to attend court based on a 2 hour hearing, therefore, totalling £785 across Wales each year.

##### Magistrates' Courts

7.900 There would be no additional costs associated with the Magistrates Courts retaining the current system, as they would continue to receive a fee income based on the number of Section 215 notice appeals they hear each year. This is estimated to be approximately £1,000 per year, based on the average number of appeals, 5, at an average cost of £200 per appeal.

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<sup>96</sup> See RIA Calculations document

<sup>97</sup> See RIA Calculations document

## The Community

7.901 Magistrates Courts do not regularly consider amenity issues and may lack the skills and knowledge necessary to make consistent decisions. When determining Section 215 appeals magistrates do not witness the alleged harm 'first hand' via a site visit, only through photographs.

## Appellant

7.902 Some Magistrates Courts use their powers to charge an appellant an administration fee for bringing Section 215 appeals to Court<sup>98</sup>, which is often £150 to £200 per appeal. An appellant would also have to prepare their appeal submission, which would involve the production of a written statement. It is estimated that this would take, on average, between 2-3 hours.

## **Benefits**

### Welsh Government

7.903 There are no identifiable benefits to the Welsh Government from the status quo.

### Local Planning Authorities

7.904 There are no identifiable benefits for LPAs of retaining the current system.

### Magistrates Courts

7.905 The Magistrates Courts would continue to receive a fee income for determining Section 215 appeals. They can currently charge an appellant an administration fee of between £150 and £200 per hearing and this would equate to approximately £1,000 per year, based on an average of 5 appeals being heard each year.

## The Community

7.906 When Section 215 appeals are heard by Magistrates Courts, there is an opportunity for members of the community to attend the hearing. This level of transparency is a desirable feature in the current system. However, the public cannot make representations, so the actual public benefits of retaining the current system are minimal.

## Appellant

7.907 Magistrates Courts rarely have the opportunity to deal with appeals where they have to consider amenity, unlike the Planning Inspectorate and therefore, an appellant may feel that their appeal is being determined in a forum that

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<sup>98</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 18.2

may not be best suited to decision making on these matters. Therefore, there are no benefits for the appellant.

## **Option 2 – Section 215 appeals to be heard by the Planning Inspectorate, rather than at a Magistrates Court**

### **Description**

7.908 This option would see the transfer of responsibility for determining section 215 appeals from the Magistrates Court to Welsh Ministers. In practice the Planning Inspectorate would determine Section 215 appeals on behalf of the Welsh Ministers. No fee would be charged.

7.909 Amendments to information submitted by the appellant and other procedural adjustments will improve consistency and performance.

### **Costs**

#### Welsh Government

7.910 The Planning Inspectorate would see an increase in their workload. Currently an average of 5 Section 215 appeals are heard each year in Wales. It is not anticipated that this appeal rate will increase.

7.911 It is expected that the majority of appeals against a Section 215 notice will be proceed by way of written representations and that the time taken to determine one will be half that of an enforcement notice appeal. Taking into account the average hourly wage of a Planning Inspectorate Higher Executive Officer, this will result in a total cost of £895<sup>99</sup> per year across Wales.

#### Local Planning Authorities

7.912 There is a saving of £365 per year as the appeal is heard by the Planning Inspectorate and a solicitor is not required to prepare the case for submission to the Magistrates Courts.

#### Magistrates Courts

7.913 There would be direct cost implications for Magistrates Courts as they would no longer hear or determine appeals against Section 215 notices.

7.914 The Magistrates Courts could potentially lose approximately £1,000 per year as they would no longer be in receipt of an administration fee of between £150 to £200 for each Section 215 appeal heard (an average of 5 per year). Magistrates Courts would not incur administration costs to prepare for Section 215 appeals overall the proposal is likely to be cost neutral or result in a small cost saving if lost fees do not reflect the true cost of the section 215 appeal process.

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<sup>99</sup> See RIA Calculations Document

## The Community

7.915 Currently, members of the public are able to attend the hearings of a Section 215 notice hearings. However, when the power to determine these appeals is transferred to the Welsh Ministers, this opportunity will cease as Inspectors are likely to use written representations to determine the appeal, rather than a hearing. The wider public will however, have the opportunity to attend site visits, although the Inspectors decision letter would retain transparency and set out all the details taken into account when forming their decision.

## Appellant

7.916 There are no identifiable costs for the appellant as they would no longer be required to submit a fee to accompany their appeal or attend court. They would however, continue to have to prepare a written submission (should their appeal be heard via written representations) which has been estimated to be approximately 2-3 hours of their time.

## **Benefits**

### Welsh Government

7.917 There are no identifiable benefits for the Welsh Government or the Planning Inspectorate with option 2.

### Local Planning Authorities

7.918 LPAs would benefit from better quality appeal decisions as it considered that the Planning Inspectorate will appreciate the amenity issues of an appeal case, more so than the Magistrates Court who may have limited knowledge of the planning and enforcement system.

7.919 There may also be reduced resource requirement in preparing the appeal statement as the Planning Inspectorate will have a greater understanding of the planning system when compared to Magistrates' Courts. There would also no longer be a need to attend court.

### Magistrates Courts

7.920 Although the Magistrates' Courts would lose a fee income under this option, their resources would be 'freed up' to focus on criminal activities, rather than an area (planning and enforcement) that the courts may have little expertise in dealing with.

## The Community

7.921 Under this option, a site visit will be conducted for all Section 215 appeals, providing the decision maker with first hand experience of the land subject to the notice.

7.922 One of the aims of transferring powers to hear Section 215 appeals from Magistrates' Courts to Welsh Ministers is to provide a consistent appeals system where all appeals are heard by the same forum. This will provide direct benefits to the wider public as the same considerations will be applied to Section 215 appeals as other enforcement appeals. It will also create a simple and consistent appeal system.

### Appellant

7.923 Hearing a Section 215 appeal at a Magistrates Court requires the appellant to attend the hearing, which may not be held at a suitable time due to personal circumstances.

7.924 Since the Planning Inspectorate would generally use written representations to determine an appeal, this would not require the appellant to attend a hearing. The preparation of a written statement is estimated to take between 2-3 hours. Furthermore, with no fee payable to submit an appeal against a Section 215 notice, appellants would benefit from a cost saving of between £150 - £200 for each appeal.

### **Justification for 2 options**

7.925 The current appeal system for a section 215 notices on land adversely affecting amenity is in need of improvement. Although there are few appeals taken forward, the Magistrates Courts are not best placed to determine an appeal as they very rarely consider matters of amenity.

7.926 A practical and consistent option is for the Planning Inspectorate (on behalf of Welsh Ministers) to determine these appeals as the Inspectorate currently hears all other enforcement appeals and also has the knowledge and technical competence in relation to planning, including local amenity issues.

### **Summary and preferred option**

7.927 Unlike all other enforcement appeals, which are determined by the Planning Inspectorate, Section 215 appeals are heard at a Magistrates Court. Although the number of Section 215 notices are is relatively low in Wales, research has indicated that due to Magistrates' Courts potentially having limited knowledge of the planning and enforcement system, they may not be best placed to make an informed decision.

7.928 Option 2 is the preferred option. It is more efficient and provides a more consistent process with all enforcement related appeals being heard in the same forum. This will rationalise the current system, and provide a more coherent enforcement regime.

*Table 7.27: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Ministers / Planning Inspectorate	-	£895	Annual Cost
Local Planning Authorities	£745	- £420	Annual Saving
Magistrates Court	£1,000	- £1,000	Annual Saving

7.929 The summary of cumulative costs for the Bill are set out in Annex A

## **Enforcement warning notice**

(Part 6 , Section 38)

7.930 Three options have been considered:

- Option 1 – Do nothing.
- Option 2 – Introduce a power to serve an enforcement warning notice to require a retrospective planning application.
- Option 3 - Introduce the ability to attach conditions to enforcement notices.

### **Option 1 – Do nothing**

#### **Description**

7.931 Under this option there would be no change to the legislation to deal with development without planning permission, but which could be made acceptable by imposing planning conditions (for example, to control the hours, mode of operation, or to carry out a landscaping scheme).

#### **Cost**

##### Welsh Government

7.932 When an LPA wishes to issue a Discontinuance Notice (under Section 102 of the TCPA 1990) to stop a development proceeding, the Welsh Ministers are required to authorise the notice before it can be served. There had only been one such notice in the last ten years so it is not appropriate to identify a detailed cost.

##### Local Planning Authorities

7.933 If the LPA consider the development is acceptable in principle but unacceptable in its current form and enforcement action is expedient, they are able to serve an enforcement notice or make an order under Section 102 (Discontinuance Notice). With approximately 241 enforcement notices served in Wales per year and an estimated cost of £98 to LPAs to serve a notice, the cost to LPAs across Wales of £27,600 each year.

7.934 As in many cases the development is likely to be acceptable, subject to various controls, the applicant is likely appeal on the ground that the steps are excessive or planning permission should be granted. The additional officer time to draft a statement and prepare for an appeal is also included in the above estimate.

##### The Community

7.935 The service of an enforcement notice does not necessarily lead to the submission of an appeal and subsequent grant of planning permission for the development. This may result in an unsatisfactory conclusion through the removal of potentially acceptable development that provides a public service.



Furthermore, there is no formal consultation procedure for the community to make representations.

## **Benefits**

### Welsh Government

7.936 There are no identifiable benefits to the Welsh Government or the Planning Inspectorate with option 1 as the fee for an enforcement notice appeal which is paid to the Planning Inspectorate, is either returned to the appellant if the appeal is granted, or passed on to the treasury if the appeal is upheld.

### Local Planning Authorities

7.937 The LPA receive a fee if the applicant appeals under an enforcement notice appeal, or chooses to submit a retrospective application. The amount paid is dependent on the application type. The average fee for a retrospective application is £322<sup>100</sup>.

7.938 It is estimated that approximately 1000 retrospective planning applications are submitted annually across Wales<sup>101</sup> and based on the average cost of a retrospective application being £322, LPAs receive approximately £322,000 per year.

7.939 Furthermore, an average 29<sup>102</sup> ground (a) appeals are determined each year in Wales. Although the fee received will vary depending on the type and scale of the application, it has been calculated that LPAs benefit from approximately £8,200 per year across Wales (based on the average fee LPAs receive for a ground (a) appeal being £283 – half of a full enforcement appeal £566).

### The Community

7.940 There are no identifiable benefits to the community under this option.

## **Option 2 – Introduce a power to serve an enforcement warning notice to require a retrospective planning application**

### **Description**

7.941 Under this option, where an LPA considers that development has been carried out without the required planning permission but that it could be made acceptable, for example, by the imposition of planning conditions, they would be able to serve an enforcement warning notice. The notice would warn the developer that unless a retrospective planning application was received within a set time, an enforcement notice would be served to stop or remove the unauthorised development.

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<sup>100</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.2

<sup>101</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.2 –

Figure 3

<sup>102</sup> Data provided by the Planning Inspectorate

## **Cost**

### Welsh Government

7.942 Procedural guidance on the delivery of the proposals will be developed for LPAs. This will provide clear instruction and will help to ensure a consistent approach by all local authorities. The cost of this guidance is set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.943 There will be a cost for LPAs as while this option would remove the requirement for the service of some enforcement notices where an unauthorised development could reasonably be made acceptable by the submission of a planning application which is approved subject to appropriate conditions it would increase the number of retrospective applications which cost more to determine from the fee received.

7.944 Based on the average number of enforcement notices served per year in Wales being 241<sup>103</sup> and assuming 25% of these could be made acceptable with retrospective planning permission, this would cost an additional £6,200 across Wales per year.

### The Community

7.945 There are no identifiable costs to the community.

### Appellant

7.946 This option will provide a cost saving to the appellant. This option would only require the submission of a retrospective planning application, which would likely be granted with conditions. This would require a fee of £322 rather than a potential £966.

## **Benefits**

### Welsh Government

7.947 There are no identifiable benefits to the Welsh Government.

### Local Planning Authorities

7.948 Where an applicant complies with the enforcement warning notice, the submission of a retrospective planning application will be accompanied by a fee. The amount paid is dependent on the application type; however the average cost of a retrospective application is £322, amounting to £322,000 per year across Wales. It is anticipated that this option will result in a decrease

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<sup>103</sup> [Research into the Review of the Planning Enforcement System in Wales](#) (June 2013) Section 4.3

in ground (a) appeals, with a corresponding increase in retrospective planning applications. Working on a projected increase of 25% in retrospective planning applications, it can be estimated that LPAs would receive an additional £19,400 per year.

- 7.949 The fee level received by the LPA for a retrospective application and enforcement notice ground (a) appeal is the same. The LPA will therefore receive the same income under option 1 or option 2.

#### Development Industry

- 7.950 The service of a notice does not increase the burden or seek to punish those who have undertaken unauthorised development. Although the notice requires submission of an application, non-compliance is not an offence.
- 7.951 The retrospective application is also considered to form a more proportionate mechanism where development is potentially acceptable. The fee that is submitted for a retrospective application is half of an enforcement notice appeal. The current average fee for a retrospective application is £322. If a retrospective application is submitted, planning permission is likely be granted, resulting in swifter resolution than the enforcement notice appeal route.

#### The Community

- 7.952 Where a retrospective planning application is submitted this will be accompanied by notification and advertisement. This ensures the public are aware of the opportunity to provide comments on the development which will be taken into account when the application is decided.
- 7.953 If the LPA approve the retrospective application, subject to any controls or limitations imposed, alternative avenues of enforcement would be able to control the development should a breach of planning control occur after the grant of planning permission.

### **Option 3 – Introduce the ability to attach conditions to enforcement notices**

#### **Description**

- 7.954 This option would see LPAs having the power to attach conditions to enforcement notices to control an aspect of an unauthorised development. The notice would grant consent for the development, subject to planning conditions that the LPA consider necessary to control any unacceptable impacts.

## **Costs**

### Welsh Government

7.955 Procedural guidance on the delivery of the proposals will be developed for LPAs. Costs are set out at the end of the development management section in paragraph 7.815.

### Local Planning Authorities

7.956 This option would provide permission for an unauthorised development. Those who have undertaken unauthorised development would have no incentive to submit a retrospective application, as the LPA may serve a notice permitting the development. This will reduce fee income through a reduction in retrospective applications would result from enforcement action. Income from retrospective a 11 applications is estimated to be £322,000 per year across Wales, based on the average cost of a retrospective planning application being £322 and the approximate number of applications submitted being 1000 per year.

7.957 The failure to comply with the conditions attached to the notice will be an offence. Therefore the LPA may be required to undertake further enforcement action as they have previously considered it expedient control the development. Where this occurs the LPA will have greater costs associated with securing an acceptable development.

7.958 Based on the estimate that the service of an enforcement notice (excluding any investigative work) is £98 and the average number of Breach of Condition Notices served per year in Wales is approximately 70, this could potentially cost LPAs £3,430<sup>104</sup>.

### The Community

7.959 The service of an enforcement notice that 'grants' permission will be seen as an alternative route to planning permission, without the costs associated with formally applying for permission. The general public may feel the developer 'has got away with it' as they will secure permission for a development without following the correct process. The service of an enforcement notice, with conditions does not provide an opportunity for the public to make representations about the development.

### Development Industry

7.960 There are no cost implications for the appellant as the service of an enforcement notice with conditions attached to make a development acceptable in planning terms would not require the submission of any applications or appeals and associated fees.

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<sup>104</sup> See RIA Calculations document

## Benefits

### Welsh Government

7.961 There are no identifiable benefits to the Welsh Government under this option.

### Local Planning Authorities

7.962 The service of an enforcement notice with conditions allows an LPA to control an unauthorised development quickly. The service of the notice will grant permission for what is considered acceptable, and if complied with, will resolve the enforcement issue.

### The Community

7.963 If an enforcement notice sets controls and limitations on development and these are complied with any 'public harm' associated with unauthorised development is effectively removed.

### Development Industry

7.964 The service of an enforcement notice that 'grants' permission will be seen as an alternative route to planning permission. Therefore those in breach of planning control will gain planning permission without having to pay a fee or undertaking any work in support of the application or notice.

## Summary and Preferred Option

7.965 Option 1 does not meet the policy objective and continues existing practice.

7.966 Option 3 provides an avenue for developers to gain planning permission with LPAs, consultees and neighbours having limited influence on the proposal. There are no fees for the developer but significant unfunded costs especially for the LPA.

7.967 Option 2 provides a system of control that is swift and proportionate in its approach to the acceptability of the development, as it encourages developers with unauthorised development to regularise their actions. The process will use an existing application process that allows public participation to achieve an acceptable outcome. Option 2 is the preferred option.

*Table 7.28 Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>	<b>Comments</b>
Local Planning Authorities	£27,587	£6,201	Annual Cost

7.968 The summary of cumulative costs for the Bill are set out in Annex A

## **Appeals: Apply the Costs Regime to the Written Representations Procedure**

**(Part 6, Section 44 )**

### **Options**

7.969 Two options have been considered:

- Option 1 - Do nothing, the cost regime does not apply to the written representation procedure for planning appeals
- Option 2 - Apply the Costs regime to the Written Representations procedure for planning appeals

### **Option 1 – Do Nothing**

#### **Description**

7.970 Under this option there would be no changes to the current legislation, which is set out in section 250 of the Local Government Act 1972.

7.971 For planning appeals, the costs regime currently only applies to appeals which proceed by way of a hearing or an inquiry. Appellants have the right to an oral hearing and can exercise this right if they wish to pursue a claim for costs.

#### **Cost**

7.972 Under this option, the current system would continue and the costs would remain unchanged.

#### Welsh Government

7.973 The costs to the Welsh Government are that other reforms to the planning system will be limited in scope. In particular, the introduction of the power to determine the procedure will be constrained as the appropriate procedure for an appeal will be dependent on whether or not either party wishes to submit a claim for an award of costs.

#### Local Planning Authorities

7.974 LPAs would not be able to claim, or be subject to a claim, for costs for planning appeals which are determined following the written representations procedure.

#### Development Industry

7.975 Developers would not be able to claim, or be subject to a claim, for costs for planning appeals which are determined following the written representations procedure.

## **Benefits**

### Welsh Government

7.976 The principal benefit of the costs regime for the Welsh Government is to regulate appellant and local authority behaviour. The costs regime discourages poor behaviour, thereby improving the efficiency of the planning system by reducing delays and encouraging better quality participation and decision-making.

7.977 The current costs regime does not fully support Ministerial aims of encouraging an efficient and streamlined planning system because poor behaviour is not discouraged via the use of awards of costs for appeals that follow the written representations procedure.

### Local Planning Authorities

7.978 The status quo means LPAs A claim for an award of costs cannot be submitted for appeals that are examined by written representations.

### Development Industry

7.979 Developers are able to benefit from the current costs regime for appeals where the appellant considers that they have incurred wasted costs due to the unreasonable behaviour of the local authority. They can make a claim for an award of costs when an appeal is determined using the hearing or local inquiry procedures. A claim for an award of costs cannot be submitted for appeals which are examined by written representations.

## **Option 2 – Apply the Costs Regime to the Written Representations Procedure**

### **Description**

7.980 Proposed improvements to the appeal system require changes to the current costs regime to maximise benefits. Wider changes include the power to determine the procedure for appeals in Wales<sup>105</sup>. The costs regime needs to be changed in line with reforms to the procedure for determining appeals. To ensure that this new power is fully effective, and to ensure that the choice of procedure reflects the planning merits of the appeal, it is necessary to widen the costs regime to include the written representations procedure.

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<sup>105</sup> The potential impact of determining the procedure on the numbers of appeals made, and any changes to the proportion that follow each procedure has not been factored in to the costs and benefits of Option 2.

## Cost

### Welsh Government

- 7.981 The proposal enables appellants and LPAs to submit claims for an award of costs for all planning appeal procedures including, written representations appeals.
- 7.982 It is estimated using experience in England that parties will submit an extra 31 claims for an award of costs on average per year. The average cost of deciding these claims is £900<sup>106</sup> per case. This equates to an estimated £28,000<sup>106</sup> additional cost to the Planning Inspectorate.

### Local Planning Authorities

- 7.983 The proposals introduce a new cost to LPAs.
- 7.984 It is reasonable to assume that the behaviour seen in England with regard to costs decisions made for written representations appeals will be replicated in Wales<sup>107</sup>. Between 2011 and 2013, 34,822 written representations appeals were decided. In the same period a total of 2,192 costs awards were made<sup>108</sup>. Therefore, approximately 6% of written representations appeals also had a claim for an award for costs made by either the appellant or the local authority.
- 7.985 Applying this to Wales, between 2011 and 2013 1,464 written representations appeals were determined. This gives an average of 488 written representations appeals per year. 6% of these appeals will also involve a claim for an award of costs, which is an estimated 31 claims on average per year.
- 7.986 Of the additional 31 appeals per year, approximately 12 (40%) will be granted, 93% of which are granted in favour of developers and 7% in favour of LPAs. This is approximately 11 awards of costs granted to developers for written representations appeal on average per year and 1 to LPAs.
- 7.987 The average cost of a written representations appeal for developers is £500<sup>109</sup> per appeal. Therefore, the total estimated value of costs granted to developers for written representations appeals is £5,500 on average per year.
- 7.988 It is estimated that local authorities will be granted approximately 1 award of costs for a written representations appeal on average per year. It costs a local authority an estimated £1,660<sup>110</sup> on average per appeal, and this additional

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<sup>106</sup> Data provided by the Planning Inspectorate

<sup>107</sup> The Costs regime was extended to written representations appeals, including Householder Appeals Service cases, in April 2009.

<sup>108</sup> Data provided by the Planning Inspectorate.

<sup>109</sup> Planning Service benchmarking club 2011 - Barchester city council 2012, p12



cost to LPAs is estimated to be £3,840. There is a corresponding net benefit to the development industry (see below).<sup>110</sup>

7.989 This figure does not account for appeals which are presently determined by hearing or inquiry, but will be decided by written representations as a result of the proposed reforms. Accordingly, it is reasonable to assume that there is a potential cost benefit should more appeals proceed by written representations and that the costs of those appeals will be lower than those for inquiries and hearings.

### Development Industry

7.990 The costs regime as proposed would be a new cost to developers.

7.991 To identify the cost to developers of awards of costs granted to local authorities, it is necessary to make further assumptions about existing costs decisions and apply it to written representations appeals. For costs awards in Wales, 40% of those claims have been successful. Of these, 7% were granted to the local authority.

7.992 It is estimated that there will be 31 costs awards made for written representations appeals on average per year. Of these, 40% will be granted, which is approximately 12 costs awards. Of these 12, 7% will be made by and granted to an LPA. This gives an estimate of approximately 1 successful award of costs granted to LPAs for a written representations appeal. This is estimated to cost the appellant £1,660 on average per year.

7.993 It is estimated that developers will make 11 successful claims for an award of costs. The value of these awards is assumed to be the cost of making a written representation, estimated to be £500 per case. It is estimated that developers will receive £5,500 on average per year in costs from LPAs.

7.994 It is also assumed that there will be no change to the number of awards of costs made and granted for hearing and inquiry appeals.

7.995 The net benefit to developers will be £3,840<sup>111</sup> per year

### **Benefits**

#### Welsh Government

7.996 The proposals form part of a package of reforms that are intended to make the planning appeal system more efficient, fair and proportionate. Without this reform, some of the aims within the wider package of reforms would be limited.

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<sup>110</sup> (Present situation £25,340 + (WR costs to developers £5,500 – WR costs to LPAs £1,660)

<sup>111</sup> (Present situation £25,340 + (WR costs to developers £5,500 – WR costs to LPAs £1,660)

7.997 It is expected that the behaviour of appellants and LPAs in planning appeals that follow the written representations procedure will improve once it is subject to the potential financial penalties of the costs regime. Whilst this impact cannot be quantified an improvement in party behaviour can be anticipated, which reduces the potential for delay in the appeal process, making it more efficient.

#### Local Planning Authorities

7.998 LPAs would be able to claim an award of costs for appeals that are determined by the written representations procedure.

7.999 It should be noted that LPAs will also benefit from the improvement in behaviour that is expected to occur with the extension of the costs regime to the written representations procedure. Whilst it is not possible to predict or quantify the impact of this option, it is expected to have a beneficial impact on the efficiency and speed of the written representations process for planning appeals.

#### Development Industry

7.1000 The benefit for developers will be the opportunity to make a claim for an award of costs where the written representations procedure for planning appeals is used. This adds fairness and transparency to the system.

#### **Justification for two options**

7.1001 A third option has not been considered for this proposal. There are only two options; to apply the costs regime to the Written Representations process or not. Wider options relating to the costs regime are explored in the amendments to the cost regime section.

#### **Summary and preferred option**

7.1002 The current cost regime, as it applies to planning appeals, plays an important role in regulating behaviour. However, it only applies to the hearing and local inquiry procedures. The current situation is also not commensurate with other reforms to the appeals system.

7.1003 It is proposed that the costs regime should be extended to the written representations procedure for planning appeals. This preferred option, option 2, enables parties to recover their costs for all planning appeals where unreasonable behaviour has led to unnecessary costs without diminishing the rights of other parties including local residents to make representations about appeals. Such a proposal encourages transparency and fairness in the appeals process, and will assist the implementation of wider appeals reforms.

*Table 7.29 Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Ministers	-	£27,000	Annual Cost
Local Planning Authorities	-	£3,840	Annual Cost
Development Industry	-	-£3,840	Annual Saving

7.1004      The summary of cumulative costs for the Bill are set out in Annex A

## Appeals: Amendments to the Costs Regime (Part 6, Section 46)

### Options

7.1005 Three options have been considered:

- Option 1 - Do nothing, retain the current cost regime.
- Option 2 - Abolish the costs regime
- Option 3 - Detach the costs regime from the Local Government Act 1972, enabling the Welsh Ministers to claim costs

### Option 1 – Do Nothing

#### Description

7.1006 Under this option there would be no changes to the current legislation, which is set out in section 250 of the Local Government Act 1972<sup>112</sup>.

7.1007 The costs regime in its current form enables the main parties to an appeal to make a claim for costs to the Inspector when one party considers that the other party has behaved unreasonably resulting in unnecessary costs. The parties are the local planning authority and the appellant.

#### Cost

7.1008 The existing costs regime applies to a range of appeal types, with the majority being planning and enforcement appeals. Costs can only be claimed when the hearing or local inquiry procedure is followed.

7.1009 Between 2011 and 2013, the Planning Inspectorate in Wales and the Welsh Government made a total of 167 decisions on claims for an award of costs (111 of which related to planning appeals). Of these, a total of 64 costs awards were made (44 of which related to planning appeals). The number of cost awards has remained relatively constant over the three years:

*Table 7.30 Costs Decisions in Wales (2011-2013)*<sup>113</sup>

Costs	2011	2012	2013	Total
Decisions	57	59	51	167
Allowed	17	27	20	64

#### Welsh Government

7.1010 The cost of the current regime for the Welsh Government is defined by the officer time required to consider a claim. Between 2011 and 2013, 25 of the 167 claims for costs by appellants and/or LPAs were considered by the Welsh Ministers. The cost of considering each claim is estimated to be £88<sup>114</sup>. The

<sup>112</sup> See also section 42 of the Housing and Planning Act 1986.

<sup>113</sup> Information provided by the Planning Inspectorate and Welsh Government.

<sup>114</sup> Data provided by Welsh Government.

cost of making costs decisions between 2011 and 2013 is estimated to be £2,200. This gives an estimated average of £730 per year.

7.1011 The cost of the current costs regime for the Planning Inspectorate is incurred through the use of Inspector time to consider and issue a decision on claims for an award of costs by the appellant and/or the local planning authority. Between 2011 and 2013, Planning Inspectors issued the remaining 142 awards of costs decisions for planning and enforcement appeals. It costs the Planning Inspectorate £900 to make each cost award decision<sup>115</sup>. Therefore, the estimated cost of making award of Costs decisions between 2011 and 2013 was approximately £128,000. This gives an average cost of £43,000 per year.

7.1012 Thus, the total cost to the Welsh Government is £44,000.

#### Local Planning Authorities

7.1013 The cost of the current regime for LPAs is the estimated value of the awards of costs granted to developers as a result of the poor behaviour of the authority.

7.1014 Between 2011 and 2013, 48 costs decisions were granted in favour of the appellant for planning and enforcement appeals; and, 7 costs decisions were awarded for called-in applications. It is estimated that developers incur the following average costs per appeal: £500 for an appeal that follows the written representation procedure; £1,000 for a hearing appeal; and, £4,000 for a local inquiry appeal. It is estimated that a call-in costs on average £61,000<sup>116</sup>.

7.1015 Therefore, the value of costs awards granted to developers between 2011 and 2013 is estimated to be £530,000. This gives an average of £178,000 per LPA per year.

7.1016 Between 2011 and 2013, there were 8 decisions granting an award of costs to a local planning authority for planning and enforcement appeals; and, 1 decision granted to local authorities for called-in applications. An appeal costs a local planning authority £1,600 on average per case, and a called-in application costs £2,900 on average per case. Therefore, the value of the awards of costs granted to local authorities is estimated to be £16,000. This gives an average of £5,000 (rounded) per year.

7.1017 The net cost for LPAs is estimated to be £173,000 on average per year.

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<sup>115</sup> Information provided by the Planning Inspectorate.

<sup>116</sup> [Benchmarking the costs to applicants of submitting a planning application, ARUP](#), July 2009, p21 (hereafter referred to as ARUP Report 2009); and; [Planning for a Sustainable Future White paper](#), 2007, pp 199-200.

## Development Industry

- 7.1018 The cost of the current cost regime to the development industry can be defined through the number of costs awards granted to the local planning authority against the developer.
- 7.1019 Between 2011 and 2013, there were 8 decisions granting an award of costs to a local planning authority for planning and enforcement appeals; and, 1 decision granted to local authorities for called-in applications. An appeal costs a local authority £1,600 on average per case, and a called-in application costs £2,900 on average per case<sup>117</sup>. There is no record kept of the amount of awards of costs. Awards of costs are expected to recover the full costs of the party. We have not assessed partial awards as the quantity of those are unknown. Where a full award is made it is assumed for the purposes of this assessment that the average cost of an appeal or call-in is equivalent to the value of a full award of costs. Therefore, for LPAs, the total value of the awards of costs granted to them is estimated to be £16,000. This gives an average of £5,000 per year.
- 7.1020 Between 2011 and 2013, 48 costs decisions were granted in favour of the appellant for planning and enforcement appeals; and, 7 costs decisions were awarded for called-in applications. It is estimated that developers incur the following average costs per appeal: £500 for an appeal that follows the written representation procedure; £1,000 for a hearing appeal; and, £4,000 for a local inquiry appeal. It is estimated that a call-in costs on average £61,000. The value of costs awards granted to developers between 2011 and 2013 is estimated to be £533,000. This gives an average of £178,000 per year.
- 7.1021 The average total net benefit for the development industry is therefore estimated to be £173,000 per year.

## Summary

*Table 7.31: Summary of costs and benefits of Option 1*

Option 1	Developers	Local authorities	Welsh Government	Total
Costs	£5,000	£178,000	£44,000	<b>£227,000</b>
Benefits	£178,000	£5,000	£0	<b>£183,000</b>
<b>Total</b>	<b>£173,000</b>	<b>-£173,000</b>	<b>-£44,000</b>	<b>-£44,000</b>

## **Benefits**

- 7.1022 The benefits associated with maintaining the current costs regime are, for the development industry and local planning authority, quantified through the value of costs awards granted to them. For the Planning Inspectorate and the Welsh Government the benefits are not so easily identified and are more

<sup>117</sup> Planning Service Benchmarking Club 2011: Barchester City Council, PAS/CIPFA Report, February 2012, pp12-13 (hereafter referred to as PAS/CIPFA Report 2012).

properly found in the reduction in poor behaviour that stems from the penalty of a successful award of costs against a party to an appeal.

### Welsh Government

- 7.1023 For Welsh Government, the benefits of the current system are found in its impact on party behaviour and the planning system as a whole. The current costs regime encourages the parties to behave appropriately when acting within the planning system. The current regime regulates and discourages poor behaviour. This, in turn, has an impact on the length of time it takes to determine appeals, and the number of events that have to be postponed or delayed.

### Local Planning Authorities

- 7.1024 LPAs can claim an award of costs where developers are considered to have acted unreasonably. If the Inspector grants the local planning authority's claim for costs, the developers must pay the local planning authority's costs for that appeal. This encourages reasonable behaviour throughout the application and appeal process.

### Development Industry

- 7.1025 Developers are able to claim costs when they have incurred wasted costs due to the unreasonable behaviour of the local planning authority. It is assumed that the average cost of making an appeal, or a called-in application, can act as a good indicator of the value of costs awards to the parties. The ability to claim for costs instils discipline in the process and retains an element of natural justice in the system.

## **Option 2 – Abolish the Costs Regime**

### **Description**

- 7.1026 Under this option the costs regime would be abolished removing a tool to regulate unreasonable behaviour.

### **Cost**

- 7.1027 Abolishing the costs regime will mean that there are no financial sanctions that can be applied within the planning system when a party acts unreasonably. Under the current regime, if unreasonable behaviour occurs and it is subject to financial detriment (not in all cases, but frequently enough to retain value as a deterrent). Without a costs regime to deter and regulate poor behaviour, it is reasonable to assume that such poor behaviour will increase. It is not possible to estimate accurately how party behaviour might change as result of the loss of the regulatory influence of the costs regime.

## Welsh Government

- 7.1028 The current cost of administering the costs regime to the Planning Inspectorate and the Welsh Government is £44,000. For identifying the savings for the Planning Inspectorate and the Welsh Government, the number of requests for an award of costs will be set at zero, this will result in a saving of £44,000 from current levels.

## Local Planning Authorities

- 7.1029 The current cost of the costs regime to LPAs is estimated to be £173,000 on average per year. As there would be no applications for costs, there would be no subsequent awards. Thus, the saving to LPAs is estimated to be £173,000.

## Development Industry

- 7.1030 For developers, removing the costs regime would result in loss of income that would previously have been recovered through successful claims for an award of costs. Option 1 established the number and value of awards of costs granted to developers, indicating poor behaviour on the part of local authorities. Under option 2, such behaviour would still occur, and may increase, but developers would not be able to recover their costs incurred as a result of the unreasonable behaviour of local authorities.
- 7.1031 The abolition of the costs regime will provide benefit to developers in the form of saved costs that would normally have been paid as a result of unreasonable behaviour on their part.
- 7.1032 It is estimated that the cost benefit to developers would be £0, down by £173,000 from the current situation.

## **Benefits**

### Welsh Government

- 7.1033 The benefit of abolishing the costs regime for the Welsh Government is that resources will not be needed for the administration of the determination of costs applications.
- 7.1034 However, the negative impact on the behaviour of parties that it is assumed will occur will outweigh any benefits that the Welsh Government might accrue. Removing the costs regime, which enables the parties to self-regulate their behaviour, could lead to an increase in unreasonable behaviour. For the Planning Inspectorate this will mean that the appeal process does not progress as efficiently as it should, resulting in delays in the decision-making process. This cannot be assessed in financial terms as the impacts are unknown.



### Local Planning Authorities

- 7.1035 The cost of abolishing the costs regime could lead to poor behaviour on the part of developers, leading to costs that could not be recovered. This could lead to an increase in unreasonable behaviour, with its associated costs. This cannot be assessed in financial terms.

### Development Industry

- 7.1036 Poor behaviour, on the part of LPAs, leading to a cost application, would continue and would be expected to increase as a result of the lack of penalty for such behaviour. This is likely to result in further delays in the determination of appeals.

## **Option 3 – Allow Inspectors to initiate of awards costs and Welsh Ministers to claim costs**

### **Description**

- 7.1037 The result of these changes is to further discourage unreasonable behaviour, leading to a more efficient appeals process. Additionally, the cost of dealing with frivolous or spurious appeals can be recovered should the Welsh Ministers consider it appropriate to do so.

### **Cost**

### Welsh Government

- 7.1038 The total cost to the Welsh Government (including the Planning Inspectorate) for deciding awards of costs, is estimated to be £44,000 on average per year.
- 7.1039 It is also proposed that the Planning Inspectorate will recover its own costs. This is a new power with no previous data on which to base estimates. To provide an illustration of what the impact might be, it is assumed that appellant unreasonable behaviour is identified as being the withdrawal of an appeal before a decision is made, and local planning authority unreasonable behaviour is indicated by an appeal decision overturning the original local authority decision<sup>118</sup>. It is assumed that only 10% of cases are the result of unreasonable behaviour that the Planning Inspectorate would award itself costs for.
- 7.1040 Between 2011 and 2013, on average 12 appeals were withdrawn per year and 25 local planning authority decisions were overturned on average per year in Wales. The cost of awarding costs to the Planning Inspectorate is assumed to be the same as that of awarding costs to another party, which is set at £900. The estimated total cost of the Planning Inspectorate claiming its own costs is estimated to be £33,000 on average per year.

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<sup>118</sup> It should be noted that these are only one example of a range of behaviours that might be considered unreasonable and causing wasted costs.

- 7.1041 Added to the cost of initiating awards of costs to the parties is the cost of the Welsh Ministers recovering their own costs. This is a new power, for which there is no data available upon which to accurately estimate the impact of this proposal. For example, where a section 106 agreement for the provision of planning obligations is prepared by the parties but is poorly drafted or unenforceable, the Welsh Government will use legal resources to check and request amendments to the document to correct the agreement.
- 7.1042 The decision to recover costs and make a decision to award costs to the Welsh Government will be made in much the same way as initiating awards of costs to other parties. And, for illustrative purposes, it is assumed that an average of 2 awards per year will be made (1 against the appellant and 1 against the local authority). The cost of administering each award is £900. Therefore, the estimated total cost of the Welsh Ministers claiming their own costs is estimated to be £1,800 on average per year.
- 7.1043 The estimated total extra cost of option 3 for the Planning Inspectorate, using the illustrations provided above, is £78,900<sup>119</sup> on average per year.
- 7.1044 Providing the Welsh Ministers with the power to recover their costs is the key financial benefit of the proposed changes for the Welsh Government. It is not possible to accurately identify the amounts that will be recovered by the Welsh Government, as this is a new power. However, it is possible to use an example to illustrate the costs that may be recovered.
- 7.1045 Costs that may be recovered by the Welsh Government is the use of legal services to check and correct poorly drafted section 106 agreements. The Welsh Government regularly check section 106 agreements submitted as part of a called-in application or recovered appeal. On average it costs £1,500 to check these agreements and confirm that they are enforceable. Where this is not the case, further legal advice is required to resolve the issues. It is estimated that resolving poor drafting errors costs the Welsh Government an extra £1,600 on average per case. It is assumed that costs will be recovered once from developers and once from LPAs. Therefore, it is estimated that the benefit of this proposal for the Welsh Government could be £3,000 (rounded) on average per year.
- 7.1046 It is possible to give an illustration of the potential benefits through identifying unreasonable behaviour associated with each party and the frequency which such behaviour might occur. For developers, withdrawing an appeal can be an example of unreasonable behaviour; and for local authorities, poor decision-making (indicated by an Inspector overturning an authority's decision at appeal) can be used. It is acknowledged that not every instance of withdrawing an appeal, or having a decision overturned is the result of poor behaviour by one party, so a percentage (10%) of these is used to give an

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<sup>119</sup> (Estimated cost of making costs decisions £44,000 + Cost of the Planning Inspectorate claiming their own costs £33,000 + Cost of claiming legal expenses by the Welsh Ministers £1,800)

illustration of how often the Inspectorate may identify wasted costs and seek to recover them.

*Table 7.32: Estimated value of Costs awards*

<b>Option 3</b>	<b>Written Reps</b>	<b>Hearings</b>	<b>Local Inquiries</b>	<b>Total</b>
Appellant	£14,000	£9,500	£19,000	£42,500
Local authority	£28,000	£26,500	£25,000	£79,500
<b>Total</b>	<b>£42,000</b>	<b>£36,000</b>	<b>£44,000</b>	<b>£122,000</b>

7.1047 The total benefit of option 3 for the Welsh Ministers is estimated to be £122,000 on average per year.

7.1048 Weighing this against the cost of option 3, estimated at £78,900 per year, the total net benefit to the Welsh Ministers is estimated to be £43,000 per year.

### Local Planning Authorities

7.1049 The Welsh Ministers could claim costs when a hearing or inquiry is cancelled or postponed; or where Section 106 agreements fail to be completed in a reasonable time due to unreasonable behaviour by the parties, leading to the Welsh Government taking a leading role in resolving the issues.

7.1050 Unreasonable behaviour is identified as the application refusal being overturned at appeal (where the Inspector allows the appeal). For the purposes of the illustration it is assumed that the Inspectorate may recover their costs for only 10% of the number of allowed appeals, which is 25<sup>120</sup> appeals per year. The value of these awards is, therefore, estimated to be £79,500 on average per year.

### *Total Value of awards of costs on average per year from local planning authorities (2011-2013)*

<b>Option 3</b>	<b>WR</b>	<b>H</b>	<b>LI</b>	<b>Total</b>
Local authority	£28,000	£26,500	£25,000	<b>£79,500</b>

7.1051 Similarly, the impact of the Welsh Ministers recovering their costs can be illustrated using the example of Legal resources expended to resolve section 106 agreement issues. In order to illustrate the impact of the Welsh Ministers recovering their costs, it is estimated that they will recover costs from LPAs for one case where they have to resolve issues with a poor section 106 agreement. It is estimated that Welsh Ministers would recover £1,500 from LPAs.

7.1052 The estimated total cost for LPAs, is estimated to be £254,000<sup>121</sup> on average per year.

<sup>120</sup> Between 2011 and 2013, 743 planning and enforcement appeals were allowed, an average of 248 per year

<sup>121</sup> (Estimated cost awards for and against local planning authorities £173,000 + Estimated cost against local planning authorities of Welsh Ministers recovering their own costs £79,500 + Cost to local planning authorities of Welsh Ministers claiming legal expenses £1,500)

### Development Industry

- 7.1053 For the purposes of this illustration it is assumed that the Inspectorate may recover their costs for only 10% of the number of withdrawn appeals which is 12<sup>122</sup>. The value of these awards is, estimated to be £42,500<sup>123</sup>.

#### *Total Value of awards of costs on average per year from developers (2011-2013)*

<b>Option 3</b>	<b>WR</b>	<b>H</b>	<b>LI</b>	<b>Total</b>
Appellant	£14,000	£9,500	£19,000	<b>£42,500</b>

- 7.1054 Similarly, the impact of the Welsh Ministers recovering their costs can be illustrated using the example of Legal resources expended to resolve section 106 agreement issues. In order to illustrate the impact of the Welsh Ministers recovering their costs, it is estimated that they will recover costs from developers for one case where they have to resolve issues with a poor section 106 agreement. It is estimated that Welsh Ministers would recover £1,500 from developers.
- 7.1055 The estimated total cost benefit for developers is estimated to be £129,000<sup>124</sup> on average per year.

### **Benefits**

#### Welsh Government

- 7.1056 The change in behaviour that is expected to occur as a result of being able to recover their own costs.

#### Local Planning Authorities

- 7.1057 LPAs are expected to benefit from the change in behaviour that is likely to occur as a result of this option.

#### Development Industry

- 7.1058 Developers will benefit from the positive effects this increase in penalties will have on party behaviour.

### **Summary and Preferred Option**

- 7.1059 The current costs regime is designed to help regulate the planning system by providing participants with the ability to recover costs which are as a result of unreasonable behaviour of another party. At present, this only applies to

<sup>122</sup> Between 2011 and 2013, 361 planning and enforcement appeals were withdrawn. This gives an average of 120 per year

<sup>123</sup> This is established by dividing the average number of withdrawn cases proportionately between the types of procedure and then applying the unit cost per procedure.

<sup>124</sup> Estimated cost benefit to developers for costs awards, £173,000  
- Total value of awards of costs to the Welsh Ministers £42,500  
- legal expenses of the Welsh Ministers £1,500

developers (in the form of appellants) and LPAs. Given the recognition of the costs regime inability to fully achieve its purpose, a reasonable option could be to abolish the costs regime altogether, option 2. This would provide some savings to the Welsh Ministers and the Planning Inspectorate through resources being released from considering costs claims. This benefit would be outweighed by a likely increase in poor behaviour within the planning system. This may lead to delays and inefficiencies within the system and raising the cost of dealing with failures within the system. This option is not preferred given its negative impact on the planning system.

- 7.1060 The preferred option, option 3 is to enhance and extend the costs regime so that it can realise its full potential to discourage unreasonable behaviour. This option will result in the more effective application of financial penalties where poor behaviour occurs and unreasonable behaviour will be further discouraged through the Welsh Ministers and the Planning Inspectorate recovering their own costs.

*Table 7.33: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Ministers	£44,000	-£87,000	Annual Saving
Local Planning Authorities	£173,000	£81,000	Annual Cost
Development Industry	£173,000	£44,000	Annual Cost

- 7.1061 The summary of cumulative costs for the Bill are set out in Annex A

## **Appeals: No new matters to be raised during the appeal process unless in circumstances prescribed in secondary legislation (Part 6, Section 45)**

### **Options**

7.1062 Three options have been considered:

- Option 1 - Do nothing, parties can submit new matters to the Planning Inspector during an appeal.
- Option 2 - No new matters to be raised during the appeal process unless in circumstances prescribed in secondary legislation
- Option 3 - No new matters may be raised during the appeal process

### **Option 1 – Do Nothing**

#### **Description**

7.1063 Under this option there would be no changes to the current circumstances.

7.1064 When a local planning authority refuses planning permission, or grants planning permission subject to certain conditions, or does not issue a decision within statutory timescales, the applicant can appeal to the Welsh Ministers.

7.1065 During the course of the appeal, parties can submit new matters which the Planning Inspectorate can consider whether to accept. If the new matters are accepted it is likely that further consultation will be required to ensure that the main parties (appellant and local planning authority) have had the opportunity to submit their views on the new matters. Both the consideration of whether to accept new matters, and administering the acceptance or rejection of the matters are time-consuming for both the Planning Inspectorate and other parties involved in an appeal, as well as confusing for local communities.

7.1066 New matters can be either information that could not have been submitted at any earlier point as well as information that could have been submitted at any point to the LPA.

#### **Cost**

7.1067 This option maintains the status quo and does not generate additional costs. The cost of maintaining the current system where new matters can be submitted after an appeal has been lodged is difficult to evaluate as the information is not recorded by participants in the appeal system. The costs are, in the main, related to the delays incurred in the appeal process as a result of having to deal with the new matters submitted by the parties.

## Welsh Government

- 7.1068 The submission of new evidence at appeal requires the Planning Inspectorate, acting on behalf of the Welsh Government, to expend time in administering the new information. This can include carrying out further consultation, copying documents between the parties and the Inspector, and requesting and processing further information on behalf of the Inspector. It has been estimated<sup>125</sup> that this costs the Planning Inspectorate on average 1 hour of an Administrative Officer's time per case (£37 per hour). It is estimated that 718 appeals are submitted on average per year. For the purposes of this Assessment it is assumed that new matters are submitted on each appeal. Therefore, it is estimated that the cost is estimated to be £26,700 on average per year.

## Local Planning Authorities

- 7.1069 LPAs spend time to preparing and submitting new evidence, either voluntarily or at the request of the Planning Inspectorate, and considering and responding to evidence submitted by other parties. This cost has not been estimated.

## Development Industry

- 7.1070 The time spent by developers to submit further information has not been costed. However, it is acknowledged that the production of further evidence represents a cost to the developer.

## The Community

- 7.1071 The community and Interested parties require time to consider new information provided during an appeal. In 2007, the Department for Communities and Local Government estimated that, on average, reviewing and commenting on new evidence required 1.5 hours per case<sup>126</sup>. It is reasonable to assume that this estimate applies to Wales as the circumstances and appeal system are essentially the same. It is estimated that 718 appeals are submitted on average per year in Wales. Assuming full use of the amendments regime, new matters are submitted for each appeal, the cost, in time, of considering and commenting on new matters in an appeal is estimated to be 1,077 hours on average per year.<sup>127</sup>

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<sup>125</sup> [Planning for a Sustainable Future White paper, 2007](#), p53.

<sup>126</sup> [Improving the Appeals Process in the Planning System](#), DCLG Consultation published May 2007, p54 (hereafter referred to as Planning Reform Consultation 2007).

<sup>127</sup> In practice new matters are not submitted on every appeal. However, the new matters that are submitted vary in complexity and time required to review and comment. Assuming new matters are made on each appeal helps take into account this variety and provides a means of comparison between options in this Assessment.

## **Benefits**

### Welsh Government

- 7.1072 The principal benefit of the current system is that the Inspectorate can request new information during the appeal process. This is normally the result of changing circumstances of direct relevance to the consideration of the appeal, such as new policies coming into effect, or where the Inspector has identified a gap in the information provided.
- 7.1073 Conversely, the submission and acceptance of new information during an appeal undermines the transparency of the appeal process, adds delay, and reduces confidence in how fair it is perceived to be by the general public

### Local Planning Authorities

- 7.1074 LPAs are able to submit information to the Planning Inspectorate which they consider is needed to reach an informed decision. This can be either voluntarily or at the request of the Inspector. Equally, they are able to consider and respond to evidence submitted by other parties, ensuring that their views are taken into account by the Inspector when considering the merits of the appeal.

### Development Industry

- 7.1075 The benefit of the current system is that they can submit further information in support of their proposed development. This can be new information, information that they withheld from the local authority, or it can be information required by the Planning Inspectorate. They are also able to respond to evidence submitted by other parties, ensuring that their views on the information presented during an appeal are taken into account by the Inspector.

### The Community

- 7.1076 The community and Interested parties are able to review new matters and provide their opinion on them<sup>128</sup>. It is also the case that, occasionally, the new matters will support the viewpoint/opinions of the interested parties/general public.
- 7.1077 The submission of new evidence at appeal, by either the appellant or the local planning authority, has an impact on interested parties and the general public by reducing the transparency of the planning system and, therefore, confidence in it. This can be reduced by delaying the appeal process to further consultation.

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<sup>128</sup> This is not true in all cases. Opportunity to comment normally only occurs when the new matters are submitted before the deadline for the submission of comments from interested parties/general public.



7.1078 The submission of new evidence will require further effort from interested parties to review it.

**Option 2 – No new matters to be raised during the appeal process unless in circumstances prescribed in secondary legislation**

**Description**

7.1079 A balance needs to be reached between preventing delay to the planning process by the submission of new material during an appeal and ensuring that all the appropriate evidence is before the Inspector when making a decision. Whilst an appellant should submit all the information available to them with their notice of appeal, there will be situations where further matters could and should be submitted later. In order to properly restrict the submission of new matters to only those that are the result of exceptional circumstances, secondary legislation will be used to define the circumstances in which new matters can be submitted. This will ensure that all parties have clarity on when the submission of new matters are and are not permitted.

**Cost**

Welsh Government

7.1080 The Planning Inspectorate, acting on behalf of the Welsh Government, will have to use resources to administer the submission of new matters under the prescribed circumstances. It must consider whether the submission of new matters is appropriate, as well as requesting new matters as directed by an Inspector. As an illustration, it is estimated that the frequency of submission of new matters will decrease and that only 10% of the current volume of work estimated to be associated with new matters will occur under this option. It is estimated that the Planning Inspectorate will incur administrative costs of approximately £2,700 on average per year, a saving of £24,000 on the present situation.

7.1081 There will be a cost, through the production of appropriate guidance, explaining the circumstances in which new information may be introduced during the planning appeal process. This will be borne by the Welsh Government. The cost of this guidance is set out at the end of the development management section in paragraph 7.815.

Local Planning Authorities

7.1082 LPAs will face similar, but reduced costs as those defined above in option 1. New matters will still be submitted in exceptional circumstances, leading to costs associated with either submitting or considering them.

### Development Industry

- 7.1083 The costs associated with this option are the same as those defined in option 1, but at a lower level. By defining the circumstances in which new matters can be considered, the number of occasions where they are submitted, or requested, should be reduced, leading to lower costs.

### The Community

- 7.1084 The community and Interested parties will, under this option, have to bear the cost of considering new matters in fewer cases. If only 10% of the current estimated volume of new matters is allowed, then interested parties/general public will only need to commit 108 hours of time to considering and commenting on them. This will result in a saving of about 969 hours of interested party/general public time.

## **Benefits**

### Welsh Government

- 7.1085 The provisions will have the effect of releasing resources for other appeal casework within the Planning Inspectorate. Option 2 will also have a beneficial impact on the appeals process by helping to maintain the quality of the Inspectorate's decisions supporting quicker decision-making. Allowing new matters to be submitted in prescribed circumstances will ensure that Inspectors have relevant information available to them when making a decision, ensuring that the high quality decision-making expected of the Inspectorate is maintained.

### Local Planning Authorities

- 7.1086 LPAs benefit in much the same way as the development industry. Time spent submitting or considering new matters is expended in the knowledge that the new matters are required for the proper consideration of the merits of the proposed scheme. Less time will be committed to considering new matters, enabling that resource to be deployed elsewhere within the planning system.
- 7.1087 LPAs will also benefit from the fact that new matters can still be submitted. The certainty provided by defining what the prescribed circumstances are for the submission of new matters means that time is not wasted preparing evidence that will not be accepted.

### Development Industry

- 7.1088 Under this option developers will benefit from the certainty of knowing when new matters may be submitted. This should reduce the frequency with which new matters are submitted or requested, thereby reducing the time spent by developers considering and responding to them. It should also reduce time spent by developers preparing and submitting new matters which have not been requested by the Inspector.

- 7.1089 Developers will benefit from a speedier appeal process. With new matters only allowed in prescribed circumstances the number of appeals which are delayed due to new matters being submitted should reduce, thereby speeding up the time to issue a decision on an appeal. This in turn will enable developers to act appropriately in response to the decision they receive. Enabling the submission of new matters in prescribed circumstances is an efficient way of managing the appeal process, ensuring that developers benefit from a streamlined and efficient planning system.

### The Community

- 7.1090 The community and interested parties will have the benefit of ensuring that the planning system is efficient, fair, and transparent. This is achieved through allowing the submission of new matters where they are required to ensure the decision is based on current and relevant information. For interested parties and the general public, fairness is maintained by further consultations taking place when appropriate.

## **Option 3 – No new matters may be raised during the appeal process**

### **Description**

- 7.1091 The submission of new matters can be an obstacle to the progress of an appeal to a decision as submission and acceptance of such material can lead to a need to carry out further consultation. Further consultation can be required to ensure that all parties have the opportunity to review and comment on the material, thus maintaining a fair and transparent process. Preventing the submission of new matters would remove this potential obstacle to a quick and transparent appeal process.

### **Cost**

### Welsh Government

- 7.1092 It is estimated that preventing the submission of new matters at appeal will save the Planning Inspectorate, acting on behalf of the Welsh Ministers, £26,700 a year<sup>129</sup>. There may also be time savings associated with removing the delays to the appeal process associated with considering new matters, and carrying out further rounds of consultation where required.
- 7.1093 In prohibiting the submission of new matters at appeal, the Planning Inspectorate will be subject to new costs. Preventing the submission of new matters may lead parties to challenge Inspectorate decisions more frequently. This will lead to an increase in legal costs for the Planning Inspectorate as well as the costs of having to reconsider the appeal if a decision is quashed. The Planning Inspectorate may also be subject to an increasing number of

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<sup>129</sup> This will be Administrative Officer resource saved through not having to administer new matters submitted either unsolicited by the appeal parties or at the request of the Inspector.

awards of High Court costs against them. If more Inspectorate decisions are challenged in the High Court then this would have a negative impact on the perception of the Inspectorate's quality of decision making.

#### Local Planning Authorities

- 7.1094 LPAs may have to expend more time and legal resources in challenging, or defending, decisions in the High Court. Local authority costs may rise with developers submitting more information with their application or, indeed, submitting more applications in order to ensure all relevant information is considered. There may be unnecessary costs associated with appeals that have to be withdrawn in order to take into account new information that is relevant to the merits of the case. Such new applications are unlikely to be associated with a fee.

#### Development Industry

- 7.1095 Preventing the submission of any new matters at appeal could lead to developers spending more time in the High Court challenging, or defending, decisions issued by the Planning Inspectorate. This will increase the legal costs required to achieve a planning decision<sup>130</sup>. Developers may be subject to other costs through having to abandon an appeal and to re-apply for planning permission.
- 7.1096 There may be some saved costs as a result of not having to consider new matters submitted by other parties, or in not having to respond to requests for new matters from Inspectors.

#### The Community

- 7.1097 The community and interested parties may need to consider and respond to more applications, particularly ones which they may already have commented on but are starting the entire process again to take into account new matters.
- 7.1098 Interested parties and the general public will benefit from time saved in not having to consider new information submitted at appeal. This is estimated to be a saving of 1,077 hours on average per year.

### **Benefits**

#### Welsh Government

- 7.1099 The benefits of this option are achieved through saved resources which can be allocated to other work. Any savings in time made within the planning system would be quickly lost due to the delays and extra cost that it is assumed will occur through challenges to decisions or restarting applications as a result of new matters arising.

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<sup>130</sup> For challenges where the developer is successful, the Courts may order the other parties to pay their costs.

### Local Planning Authorities

- 7.1100 LPAs will achieve few benefits from this option. Time, and costs, saved in not having to consider or provide new matters will be outweighed by the negative costs of not being able to submit new matters when appropriate.

### Development Industry

- 7.1101 Benefits will derive from further certainty in the process in that there is no ambiguity as to the planning process. This gives a consistent approach. However, the flexibility of being allowed to amend a scheme will be lost.

### Community

- 7.1102 For the community, there will be increased transparency and certainty in the process in that no new information will be introduced at a late stage in the process.

### **Summary and Preferred Option**

- 7.1103 The current system, option 1, allows parties to submit new matters during an appeal. In addition the Inspectorate is able to request that the parties provide new matters for the Inspector as part of the consideration of the appeal. Because there is no limit on the submission of new matters, resources are spent submitting, considering, and commenting on new matters, regardless of the ability of a party to submit them at a more appropriate point in the planning process. This adds cost and delays the decision-making process and frustrates third parties.
- 7.1104 Option 3, preventing the submission of new matters altogether would resolve the inadequacies of the current circumstances. This may lead to decisions that may not reflect the full planning considerations of a case. This could add delay and expense to the planning system, including the potential for High Court challenges. This option would not promote a fair and transparent system.
- 7.1105 The preferred option 2 enables the submission of new matters in circumstances prescribed in legislation. This will reduce the frequency of submission of new matters, thus reducing the costs associated with submitting, considering, and commenting on them. Parties to the appeal processes make savings through the reduction in new matters submitted, maintaining confidence in the planning system.
- 7.1106 Whilst a saving of £24,000 over the current system is not as high as the second option, the benefits of submitting new and highly relevant matters, within statutory parameters, and at the appropriate stage, is retained.

## **Appeals: No variations can be made to the proposed scheme after the notice of appeal has been made** (Part 6, Section 42)

### **Options**

7.1107 Three options have been considered:

- Option 1 - Do nothing, an appellant can submit variations to a scheme during the appeal process
- Option 2 - Variations can be made to a proposed scheme after the notice of appeal is submitted only in circumstances prescribed in secondary legislation
- Option 3 - No variations can be made to a proposed scheme after the notice of appeal is submitted

### **Option 1 – Do Nothing**

#### **Description**

7.1108 Under this option there would be no change to current practice.

7.1109 When a LPA refuses permission, or grants permission subject to conditions, or does not issue a decision within statutory timescales, the applicant can appeal to the Planning Inspectorate. When making an appeal, or during the appeal process, an applicant can submit variations to the scheme which had been considered by the LPA. These variations/amendments are intended to improve the possibility of receiving permission by seeking to overcome the LPA or interested party objections to the proposed development. It is at the Inspector's discretion to accept these amendments.

#### **Cost**

7.1110 The cost of doing nothing, and maintaining the current system where amendments can be made to a scheme that is the subject of an appeal, is difficult to estimate the information is not recorded by participants in the appeal system. The costs are, in the main, related to the delays incurred in the appeal as a result of having to deal with amendments submitted by the parties. This option maintains the status quo and does not create additional costs.

#### Welsh Government

7.1111 The main burden of costs incurred as a result of schemes being amended after an appeal has been submitted are borne by the Planning Inspectorate. The actual time required to deal with amendments, along with frequency with which they are submitted, is not recorded. In 2007, DCLG estimated that the cost of the submission of amendments was an additional hour of

administrative time for every planning appeal<sup>131</sup>. The average full cost of a member of administrative staff at the Planning Inspectorate, including on-costs, is £37.60 per hour. It is estimated that 718 appeals are submitted on average per year. For the purposes of this Assessment it is assumed that an amendment is made to each appeal. Therefore, it is estimated that the cost of option 1 is £27,000 on average per year.

### Local Planning Authorities

- 7.1112 The current cost for LPAs of dealing with amendments to proposed schemes at appeal is not recorded. Consideration of and comment on such amendments carry a resource cost for authorities.
- 7.1113 The benefits of the current circumstances are minimal for LPAs. They may make minor savings from not having to consider and negotiate amendments to a proposed scheme in the knowledge that amendments can be made at an appeal, and from not having to carry out any associated consultations.

### Development Industry

- 7.1114 It is not possible to establish the direct developers' costs associated with amending a proposed scheme at appeal. The wider impact of submitting amendments to the proposed scheme will be delays to the appeal process. Extra consultation stages may be required before the Inspector can consider and reach a decision on the merits of the case.

### The Community

- 7.1115 The impact of the continued submission of amendments to schemes consists of extra time required to review and comment on the amendments which would be subject to further consultation<sup>132</sup>. The financial cost per hour for a member of the general public to consider these amendments is not known. As previously outlined, the cost in hours of considering and commenting on amendments is estimated to be 1,100 hours on average per year across Wales<sup>133</sup>.

## **Benefits**

### Welsh Government

- 7.1116 There are no identified benefits for the Welsh Government.

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<sup>131</sup> [Improving the Appeal Process in the Planning System](#), DCLG Consultation, published May 2007, Annex C, pp53-54 (hereafter referred to as Planning Reform Consultation 2007).

<sup>132</sup> Consultation would be carried out by the Planning Inspectorate (as indicated by their costs above). Some developers will also consult to gain further support for their amendments and their positive impact on the planning merits of the proposed development (the cost of this consultation exercise by the developer has not been assessed).

<sup>133</sup> In practice amendments are not made to every appeal. However, the amendments that are made vary in complexity and time required to review and comment. Assuming amendment is made to each appeal helps take into account this variety and provides a means of comparison between options in this Assessment.

### Local Planning Authorities

- 7.1117 Where a decision is made by a Local Planning Authority, it is based on the plans which were refused at that time. Amendments to schemes following the submission of an appeal may undermine any previous considerations and negotiations that they have undertaken prior to the appeal being submitted.

### Development Industry

- 7.1118 The current system provides developers with the benefit of being able to amend their proposed scheme after the local planning authority has considered it at the application stage. This provides developers with the opportunity to overcome objections to the proposed scheme without continuing further negotiations with the local authority.

### The Community

- 7.1119 The ability to make amendments at the appeal stage may cause frustration and confusion as to which plans are subject to the appeal. On occasions where alterations to applications occur before or during a public inquiry, there will sometimes be little opportunity to make representations, which could potentially compromise the transparency of the system.

## **Option 2 – Variations can be made to a proposed scheme after the notice of appeal is submitted only in circumstances prescribed in secondary legislation**

### **Description**

- 7.1120 The ability of an appellant to vary their proposed scheme at appeal could be limited to circumstances prescribed in secondary legislation which identify where this would be acceptable. This would enforce the principle that an appeal should only be a measure of last resort whilst acknowledging that, in some exceptional circumstances, variations to a scheme should be made. However, by providing for specific conditions in which variations can be made, developers may be encouraged to meet these conditions rather than seek to resolve the issues earlier with the LPA. Costs and delays associated with receiving and accepting variations to proposed schemes will also still be incurred albeit at a lower level than option 1.

### **Cost**

### Welsh Government

- 7.1121 The Planning Inspectorate, appointed by the Welsh Government, will bear the cost of administering the submission of amendments to proposed schemes that are the subject of appeals. The full impact of prescribing the circumstances in which amendments can be submitted is not known.



However, it is anticipated that the reduction in amendments accepted will be significant. Using an illustrative reduction of 90% in the number of amendments as identified in option 1, it is estimated that the cost of administering cases with amendments would be £2,700 on average per year; a saving of £21,300 per year.

- 7.1122 It is possible that there could be challenges to decisions to allow amendments are submitted. This could potentially lead to legal costs associated with High Court challenges, or judicial review of the Inspectorate's decision.

#### Local Planning Authorities

- 7.1123 LPAs will bear the cost of considering amendments to a proposed scheme at appeal in defined circumstances. They will also face increased costs due to an anticipated increase in negotiations with developers as they would have to engage more with the LPA to overcome any objection.

#### Development Industry

- 7.1124 Developers will face costs associated with preparing and submitting amendments to their proposed scheme in the defined circumstances allowed under this option. Where they wish to have amendments considered in circumstances which would be prescribed by legislation, their application stage costs will rise as they will need to continue negotiations with the local authority in order to pursue the potential for the amendments to overcome the authority's objections to the proposed scheme.

#### The Community

- 7.1125 There will be a small cost for the community and interested parties. It is not known what impact this option may have, but it can be assumed that there will be a significant reduction in the number of occasions amendments are accepted at appeal. Therefore, assuming a 90% reduction in the number of amendments as identified in option 1, it is estimated that interested parties and the general public will incur a cost of approximately 108 hours effort on average per year, which is a reduction in 992 hours.

### **Benefits**

#### Welsh Government

- 7.1126 Prescribing the circumstances in which amendments can be submitted at appeal will provide benefits to the Planning Inspectorate in terms of resources that can be released for other appeal work. The transparency of decisions made by the Welsh Ministers would be increased.

### Local Planning Authorities

- 7.1127 The workload of LPAs will increase as a result of this proposal. There will be scope for further negotiation during the application phase of the planning process. There is a lower chance that an application will be amended following service of appeal, which is more likely to uphold the integrity of the decision made by the local planning authority.

### Development Industry

- 7.1128 The principal benefit of this option is that developers will be able to submit amendments to their proposed scheme at appeal in defined circumstances. As a result, they will be able to present a scheme that may be able to overcome an objection which the LPA had to the initial scheme.

### The Community

- 7.1129 There will be increased transparency in the appeals process as interested parties would have full knowledge of the circumstances in which an amendment can be made. The scheme which is decided upon by the Planning Inspectorate is likely to be that which was considered by the local planning authority.

## **Option 3 – No variations can be made to a proposed scheme after the notice of appeal is submitted**

### **Description**

- 7.1130 This option proposes that developers may not vary their application once the notice of appeal is submitted. It removes the potential for delay to the appeal process by ensuring that the scheme submitted at the start of the appeal is the same one that will be considered by the Inspector. This removes any costs associated with delay (further consultation and delays to issuing the decision) and enforces the principles of making an appeal as a last resort. Under this option, if the reasons for refusal can be overcome through variation to the proposed scheme, these will need to be dealt with at the local level rather than through the appeal process.

### **Cost**

### Welsh Government

- 7.1131 The actual time required to deal with amendments to appeals, along with the frequency with which they are submitted, is not recorded. Therefore, the full impact of preventing the submission of amendments is not known. However, Option 1 estimated that the cost of accepting amendments is £27,000 per year. These costs would not be incurred if no amendments could be submitted, resulting in a saving of £27,000 per year.

### Local Planning Authorities

- 7.1132 It is anticipated that developers will engage more with LPAs to overcome opposition to a proposed development. This would result in an increase in local authorities' costs associated with considering amendments and negotiating with developers. However, cost at the appeal stage of the planning process would be reduced from not having to consider and comment on any amendments accepted by the Planning Inspectorate. This option is cost neutral.

### Development Industry

- 7.1133 Prohibiting the submission of amendments to a proposed scheme at appeal will transfer developer costs from the appeal stage to the local planning authority/application stage. Costs associated with preparing amendments to a proposed scheme will be expended prior to an appeal as the developer will only be able negotiate changes to the scheme at the local level, with the local planning authority.
- 7.1134 This has the potential to reduce the number of appeals being submitted, further adding to the costs saved by developers through spending less time in the planning system.

### The Community

- 7.1135 For the community and interested parties, this option removes any costs they currently undergo during the appeal stage. However, an element of this cost will be transferred to the application stage due to developers continuing negotiations with LPAs that may generate further consultations with interested parties and the general public.
- 7.1136 Removing the potential to submit amendments to proposed schemes at appeal creates time savings for interested parties and the general public. This is estimated to generate a saving of, on average, approximately 1,100 hours per year.

## **Benefits**

### Welsh Government

- 7.1137 This option will generate savings for the Planning Inspectorate as resources currently used to administer the submission of amendments to schemes can be used more effectively elsewhere in the appeal process.
- 7.1138 Prohibiting the submission of variations to a proposed scheme at appeal will encourage further negotiations and decision-making at a local level, within the communities in which the development will be built. This will enhance the fairness and transparency of the planning system, and help to make the planning system more efficient and streamlined.

### Local Planning Authorities

- 7.1139 Prohibiting amendments at the appeal stage will ensure that developers pursue changes to their schemes with the local planning authority, retaining decision-making at a local level, and encouraging better working relationships with developers.
- 7.1140 Any appeal will be based on the same scheme as that put before the local planning authority, increasing transparency in the system and consistency of information upon which the decision is based.

### Development Industry

- 7.1141 The appeal process will be more efficient and transparent, achieving decisions quicker due to the removal of delays associated with administering the submission of amendments. By encouraging continued negotiations with the local authority, developers may resolve objections to the scheme and the relationship with the local planning authority may improve.
- 7.1142 Conversely, the development industry may encounter circumstances whereby an amendment is required at the appeal stage to make their proposed development acceptable. This may add some frustration for the developer through the delay of a consent in having to submit an entirely new scheme for the LPA to consider.

### The Community

- 7.1143 The community and Interested parties will benefit from increased consideration of proposed development at a local level. Decision-making will be made within the community, ensuring that planning is seen to be fair and transparent by those affected by the impact of development.

### **Summary and Preferred Option**

- 7.1144 The planning system currently allows for developers to submit amendments to their proposed scheme after an appeal has been made. Option 1 creates costs for all parties involved and reduces the ability of authorities to make appropriate decisions regarding development in their communities. Allowing variations to schemes also undermines the fairness and transparency of the planning system and appeal process.
- 7.1145 Under option 2, restricting the submission of variations to circumstances prescribed in secondary legislation would not overcome the issues associated with the current circumstances. Defining a clear and consistent set of circumstances would be very difficult and could lead to greater costs at the appeal stage associated with managing disputes and possible legal challenge, when disputing whether an amendment meets those circumstances.

- 7.1146 The preferred option 3, prohibits the submission of any variations at appeal. This removes the costs for the Planning Inspectorate and encourages greater negotiation between developers and local authorities. This will enhance local decision-making and increase the fairness and transparency of the planning system, while improving relationships between developers and the local planning authority.

*Table 7.34: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Saving from legislation</b>	<b>Comments</b>
Welsh Government	£27,000	-£27,000	Annual Saving

- 7.1147 The summary of cumulative costs for the Bill are set out in Annex A

#### Guidance

- 7.1148 There will be a cost, through the production of appropriate guidance, explaining the changes to the enforcement and appeals system in Wales. The enforcement guidance costs are set out in the development management section above.

*Table 7.35: Total costs for the Enforcement and Appeals Section*

	<b>Existing Costs</b>	<b>Additional Cost from legislation</b>
Welsh Government	£127,765	£121,280
Local Planning Authorities	£252,053	£63,400
Development Industry	£217,110	£18,369
Magistrates Court	£1,000	£1,000

- 7.1149 The summary of cumulative costs for the Bill are set out in Annex A

## **Town and Village Greens**

### **(Part 7, Section 47-50)**

#### **Options**

7.1150 Two options have been considered:

- Option 1 - Do nothing, anyone can apply for land to be registered as a village green at any time
- Option 2 - Exclusion of Town or Village Green applications for land which has entered the planning system and to introduce landowner declarations.

#### **Option 1 – Do Nothing**

##### **Description**

7.1151 Under this option there would be no changes to current legislation in Wales, which is set out in section 15 of the Commons Act 2006 (“the 2006 Act”).

7.1152 Commons Registration Authorities (CRAs) are responsible for maintaining the registers of Common Land and Town or Village Greens (“TVGs”) in Wales. There are 22 CRAs in Wales, corresponding with each Unitary Authority. They undertake the determination process for applications to register land as a TVG.

7.1153 At present, anyone can apply to a CRA for land to be registered as a TVG under section 15(1) of the 2006 Act, and there is no fee for doing so. The process is quasi-judicial in that applications require appraisal of both the facts and the law for a decision to be made. The criteria for determining TVG applications are that the local inhabitants have used the land ‘as of right’ for a period of at least 20 years. This assumes long, uninterrupted use, without permission, force or secrecy.

7.1154 Where a site is registered as a TVG, it is granted protection by the Inclosure Act 1857 and the Commons Act 1876 from development or disturbance, though the site may be de-registered under section 16 of the Commons Act 2006 in exchange for other land which will be registered as a TVG.

##### **Cost**

##### Welsh Government

7.1155 There is no cost to the Welsh Government in relation to applications for TVG registration as they have no role to play in their determination. CRAs may engage a Planning Inspector to hold an inquiry into an application for registration, with the Inspector reporting to the CRA and not the Welsh Government or Planning Inspectorate. The CRA will reimburse the Planning Inspectorate directly for the Inspector’s costs.

### Local Planning Authorities

- 7.1156 Although the CRA is normally within the same authority as the Local Planning Authority (“LPA”), they must both co-operate on applications where land is registered as a TVG. The cost of the LPA contacting the CRA where there is a planning proposal would form part of their administrative duties, this is anticipated to be a standardised notification memorandum or letter for a national park authority, and is estimated to cost local planning authorities £53 a year. The 3 National Park Authorities in Wales are LPAs but are not CRAs.

### Commons Registration Authorities

- 7.1157 The 22 CRAs are responsible for maintaining the register of TVGs in Wales. They bear the cost of the registration process, which can include administrative and management-level staff processing the application, internal and external legal advice, and the costs associated with a public inquiry and/or committee hearing, where applicable.
- 7.1158 An application to register land as a TVG is often administered by a legal officer of a CRA and is decided by the authority. Some TVG applications are decided through a public inquiry, often in cases where the CRA owns the land or to demonstrate transparency in reaching a decision.
- 7.1159 Evidence that we have received from 18 of the 22 CRAs suggests that there were 25 TVG applications between 2010 and 2013 in Wales, This equates to 6.25 applications per year. Assuming an equal distribution of applications and adjusting the figures to reflect the remaining 4 CRAs, suggests a total of 7.6 applications per year in Wales. Each application took an average of 2 years to consider.
- 7.1160 The cost of administering an application for a TVG may vary on a case by case basis, depending on whether that application went to a public inquiry or otherwise. The cost to the Planning Inspectorate of undertaking a public inquiry has not been assessed as part of this impact assessment, as their costs are borne by the CRAs.

*Table 7.36: Cost of applications to register a TVG to CRAs (Option 1)*

A	Number of TVG applications per year	7.6	Average number of applications received per year from 18 <sup>134</sup> CRA returns (6.25), averaged to 22 CRAs. $((122 / 18) \times 6.25)$
B	Share of applications going to public inquiry	40%	Average number of applications going to inquiry per year (2.5) divided by the 6.25 TVG applications per year.
C	Estimated average cost of public inquiries	£17,820	Based on an average of the 5 case studies received from CRAs which went to public inquiry.
D	Basic CRA processing costs, excluding public inquiries	£1,400	Based on CIPFA benchmarking survey of CRAs <sup>135</sup>
E	Estimated cost to CRA per application	£8,528	$(B \times C) + D$
F	<b>Total annual cost to CRAs</b>	<b>£64,813</b>	<b>A x E</b>

### Development Industry

- 7.1161 There are direct costs to landowners and developers arising from the current TVG registration system, irrespective of the outcome of an application. Such costs are incurred through activities such as objecting to a TVG application, legal costs, delays to development or even the total abandonment of a project.
- 7.1162 Developers acquire land at a certain value, which reflects the potential of that land for development. The potential development value of land can reduce, in some cases significantly, upon registration as a TVG. This is perceived to be due to the difficulties in being able to develop land registered as a TVG because of the protection afforded to it. This can leave developers with a devalued area of land which can be difficult to dispose of. Whilst this cost is not quantified due to the commercially sensitive nature of land transactions, it is an issue that has been raised by developers when making observations on the TVG regime.
- 7.1163 The most frequent direct costs to landowners or developers arise from professional fees paid to address objections to TVG applications. This may involve the instruction of a solicitor, Counsel, a surveyor and providing evidence to prove that the land has not been in uninterrupted recreational use, without permission, force or secrecy for 20 years. Those costs will increase further where the application is heard at a public inquiry.

<sup>134</sup> All 22 CRAs were contacted by the Welsh Government of which 18 had returned information on applications to register TVGs in their area

<sup>135</sup> CIPFA; Benchmarking survey of CRAs in the south west (2011).



- 7.1164 Other costs to landowners or developers relate to the abandonment or delaying of plans to develop land. Such costs are difficult to quantify and vary depending on the development type and financial model of each proposal, as well as the length of delay or whether the development must be restricted or abandoned altogether. Losses to developers resulting from delays may include contracting costs, the loss of potential rental or investment income, extra finance costs and project management fees. Abandonment of a development where building work is completed, or partially completed may result in further costs, including the total loss of investment and depreciation in land value.
- 7.1165 Evidence submitted by developers in England to DEFRA's consultation on the registration of new town or village greens<sup>136</sup> indicated that the average cost of a TVG application to the developer is £48,588<sup>137</sup>. This cost does not include the loss of development land value. There is no reason to assume that this figure would be substantially different for applications in Wales given that the procedure for the determination of TVG applications follows a similar process.

*Table 7.37: Cost of applications to register a TVG to developers (Option 1)*

<b>A</b>	Number of TVG applications per year	7.6	Average number of applications received per year from 18 CRA returns (6.25), averaged to 22 CRAs ((22 /182) x 6.25)
<b>B</b>	Estimated cost to developer per TVG application	£48,588	Based on consultation responses to DEFRA's consultation on the registration of new town or village greens (July 2011)
<b>C</b>	<b>Costs to the developer</b>	<b>£369,269</b>	<b>A x B</b>

#### Applicants for TVG registration

- 7.1166 Responses to DEFRA's consultation on the registration of town and village greens (TVGs) indicated that the time taken to produce a TVG application ranges from 9 days to 22 days, based on three responses. It is assumed that a similar figure applies to Wales, given the similar requirements to put together an application. However, this range and amount of responses is not considered sufficient to provide quantified estimates of applicants' costs. Further, it is difficult to estimate the cost of a person's time, given that little is known of their background, skills, qualifications and availability.
- 7.1167 Whilst there is no application fee for the production of a TVG application, it is expected that an applicant collects evidence forms from residents, generates support, prepares an application, gives evidence at a public inquiry and incurs legal costs.

<sup>136</sup> DEFRA; "Consultation on the registration of new town or village greens": July 2011

<sup>137</sup> DCLG; "Impact Assessment – Reforms to the town and village green registration system"; September 2012 (Table 3 – Landowner's cost, excluding cost for the registration of Ashton Vale, Bristol, due to the irregularity of the figure)

### Third Parties

- 7.1168 There are costs to third parties for engaging in the process in terms of time spent and any donation that they make towards a campaign for the registration of a TVG.
- 7.1169 It is difficult to quantify the cost of third party participation in the process as there is no evidence available as to the average amount of time that a member of the public would spend contesting or supporting a TVG application. Much is dependent on whether third parties share similar characteristics to either the applicant or the developer.

### **Benefits**

#### Welsh Government

- 7.1170 There are no identifiable benefits to the Welsh Government.

#### Local Planning Authorities

- 7.1171 The existing TVG registration system impacts on LPAs by introducing delays where an application to register a TVG is made where land has entered the planning system.

#### Commons Registration Authorities

- 7.1172 There are no known benefits to Commons Registration Authorities (CRAs).

#### Development Industry

- 7.1173 Unless a landowner voluntarily registers their land as a TVG, there are very few benefits that the landowner may accrue from the registration of a TVG. Aside from the recreational benefit that registration as a TVG may bring the development value of that land may decrease.
- 7.1174 Whilst our evidence suggests that the determination of an application to register a TVG may be costly and time-consuming, the determination of such an application will resolve any uncertainty about the status of the land, be it a successful or unsuccessful application. This will provide the landowners with certainty and confidence in any future plans for their sites.
- 7.1175 For those developers who are looking to gain consent for development on their land, a disadvantage will arise through the increased difficulty in gaining permission for development on that land and through the time spent objecting to applications to register a TVG.

#### Applicants for TVG registration

- 7.1176 Whilst there are no evident financial benefits to the present system, benefits to the applicant arise in situations where the land is registered as a TVG, and is

protected from development and interference. This may promote health and wellbeing locally, or may be motivated by a desire to maintain the value of existing property in the area.

- 7.1177 Where an application is unsuccessful, any delay caused by the period for determination of the TVG application may be seen as generating short-term benefits. Any delay allows for continued use for recreation, and the potential for the abandonment of development proposals, should the delay cause a scheme to be unviable. Any delay caused may also allow time for publicity and for local support to be generated to secure the land for future recreational use.
- 7.1178 There is presently no fee for TVG applications, allowing any potential applicant to register a TVG at no cost.
- 7.1179 Whilst there is a cost to the applicant, the perceived benefit to them far outweighs the costs incurred to register a TVG.

### Third Parties

- 7.1180 Depending on the stance of the third party, third parties will share similar assessed benefits to either the landowner or to the applicant for a TVG registration.

## **Option 2 – Exclusion of Town or Village Green applications for land which has entered the planning system and to introduce landowner declarations.**

### **Description**

- 7.1181 It is not proposed to change the way in which an application to register a TVG is made, nor the legislative basis on which a TVG is registered. Instead it is proposed to introduce a number of restrictions on the ability to make an application where certain events related to the planning system have occurred.
- 7.1182 Current applications to register TVGs can be made in isolation from other consenting regimes and they do not take into account other considerations, including decisions taken in the planning system.
- 7.1183 The overlap with the planning system may cause developers to suffer certain consequences, such as delays to development until a decision has been reached on a TVG application or even the abandonment of the scheme. It may also cause problems for local authorities in the preparation of development plans and regeneration strategies and also delay, or prevent, public developments from proceeding.
- 7.1184 It is proposed to exclude TVG applications for sites which are the subject of a planning application or an extant planning permission, where there is a deemed planning consent under the planning legislation, or which has been allocated for development in an adopted or draft LDP, SDP or NDF document.

- 7.1185 The local community is fully involved in these decisions about the use of land, with planning applications and the preparation of development plans widely publicised by LPAs in line with statutory requirements. The emphasis is on LPAs and communities considering a site's future through the planning process, helping to reconcile any conflict between development and potential registration as a TVG. This provides a means of striking a better balance between protecting high quality green space valued by local communities and enabling the right development to occur in the right place at the right time.
- 7.1186 It is also acknowledged that it can be difficult for landowners to protect their land from use 'as of right' (i.e. without permission, force or secrecy), particularly where ownership of land changes. Ways that landowners prevent such recreational use is through the construction of a physical barrier or to place notices around the land placing conditions on use. This can be impractical or inconsistent and has given rise to actions in the Courts.
- 7.1187 It is proposed to introduce a system through which landowners may issue a declaration relating to the use of the land which will bring to an end any recreational use 'as of right' over the land to which the declaration applies. The system will be similar to that whereby landowners can make declarations of a right of way under section 31(6) of the Highways Act 1980. This process will involve the depositing of a map and statement, as well as an administration fee, to the CRA.

## **Cost**

- 7.1188 The cost for the impact of introducing landowner declarations on the number of TVG applications has not been assessed as part of this RIA, as there are certain overlaps with the other aspects of the reforms relating to the restriction of the submission of TVG applications. This will also depend upon individual landowner decisions and there are difficulties in assessing whether landowners will use this measure frequently. The benefits and disadvantages of this proposal have been explored, based on likely assumptions, as this option will produce new behaviours which cannot be assessed, no financial estimate can be provided.

## Welsh Government

- 7.1189 There is to be no additional cost to the Welsh Government as a result of the reforms.

## Local Planning Authorities

- 7.1190 Where a TVG is applied for, the CRA would have to contact the LPA to ascertain whether there are any planning proposals relating to the land in question. There will be an additional burden to LPAs in having to respond to more requests for information from CRAs. LPAs maintain this information publicly through the register of planning applications and LDP proposals maps. The cost of the LPA contacting the CRA is to be accommodated as part of their administrative duties.

## Commons Registration Authorities

7.1191 Evidence that we have received suggests that of the 25 known TVG applications received in Wales (2010-2013), 40% (10) of those applications were made following either the submission of an application or the grant of planning permission on the same site, or where it has been allocated in a draft or adopted development plan.

7.1192 The proposals will result in a 40% reduction of applications to register a TVG as such applications could not be made where land has entered the planning system.

*Table 7.38: Cost of applications to register a TVG to CRAs (Option 2)*

A	Number of TVG applications per year	7.6	Average number of applications received per year from 18 CRA returns (6.25), averaged to 22 CRAs $((18 / 22) \times 6.25)$
B	Number of applications made on sites which have entered the planning system, per year.	3	Average number of applications made on sites which have entered the planning system per year (2.5) received from 18 CRA returns, averaged to 22 CRAs. $((18 / 22) \times 2.5)$
C	Likely reduction of TVG applications.	40%	A / B
D	Estimated cost to CRA per application	£8,528	(E from Table 7.36)
E	Annual savings to CRAs per application	£3,411	C x D
F	Total annual savings to CRAs from current situation.	£25,924	A x E
<b>G</b>	<b>Total annual cost to CRAs</b>	<b>£38,889</b>	<b>F from Table 7.36 - F</b>

7.1193 A new duty will be required of CRAs to contact the LPA should an application to register a TVG be lodged. The cost of the CRA contacting the LPA is to be accommodated as part of their administrative duties.

7.1194 New costs will also be imposed on CRAs through the requirement of processing declarations and maintaining a register of those declarations (and accompanying maps). The cost of this activity is also considered to be an extension of the CRA's administrative duties. However, it is likely that the cost of the declaration scheme will be funded by the CRA's power to prescribe fees for the processing of a declaration.

## Development Industry

- 7.1195 The evidence provided by CRAs, suggested that many of the applications to register a TVG occur where it is known that there are proposals to develop the land concerned. Of the 25 known applications to register a TVG, 10 were made where the application site was allocated in a development plan or draft development plan or was subject to a planning application or permission.
- 7.1196 It is assumed that if an area of land has been registered as a TVG, it will devalue significantly, as there will be no development potential to the site. The proposals for a declaration will retain any resale value of land. Given that TVGs can be any size or shape, this cannot be quantified.

*Table 7.39: Cost of applications to register a TVG to developers (Option 2)*

A	Number of TVG applications per year	7.6	Number of applications received per year from 18 CRA returns (6.25), averaged to 22 CRAs $((18 / 22) \times 6.25)$
B	Number of applications made on sites which have entered the planning system, per year.	3	Average number of applications made on sites which have entered the planning system per year (2.5) received from 18 CRA returns, averaged to 22 CRAs. $((18 / 22) \times 2.5)$
C	Likely reduction of TVG applications.	40%	A / B
D	Estimated cost to developer per TVG application	£48,588	Based on consultation responses to DEFRA's consultation on the registration of new town or village greens (July 2011)
E	Average annual savings to developers or landowners	£19,435	C x D
F	Total annual savings to developers or landowners from current situation.	£147,706	A x E
G	<b>Total net annual cost to developers or landowners</b>	<b>£221,563</b>	<b>C from table 7.37 - F</b>

- 7.1197 Some additional costs may be borne by landowners and developers in taking a more pro-active approach to being involved in the development plan process. This will require the submission of the land as a candidate site in the draft development plan, including representations to the LPA in support of the land throughout the development plans process. There is an expectation however that, if a developer/landowner had long-term ambitions to develop the land; they would participate in this process, regardless of whether their participation would preclude a TVG application.

- 7.1198 There will be no cost to the developer or landowner above current rates for the submission of a planning application.
- 7.1199 Some of the cost to landowners will be incurred through the production of a map and statement to support a declaration. CRAs will be able to charge a fee in relation to a declaration, in order to recover their processing costs. As this fee would be dictated by the CRA, the cost cannot be assessed or estimated.
- 7.1200 It is not possible to estimate the number of declarations likely to be made due to the absence of comparable data.

#### Applicants for TVG registration

- 7.1201 As specified in option 1, responses to DEFRA's consultation on the registration of TVGs indicated that the time taken to produce a TVG application ranges from 9 days to 22 days, based on three responses. This is not sufficient to provide quantified estimates of applicants' costs.

#### Third Parties

- 7.1202 Depending on their stance, third parties will share similar assessed costs to either the landowner/developer or to the applicant for representation of a TVG, which is £48,600 per application.

### **Benefits**

#### Welsh Government

- 7.1203 The proposed legislation will have a positive impact in that overlap will be removed between the Commons registration system and the planning regime.
- 7.1204 Pro-active use of the declaration system will encourage landowners and developers to consider the future use of their land at an earlier stage and may result in more recreational land being brought forward in the knowledge that it could be developed in the future without the prospect of an application to register a TVG.

#### Local Planning Authorities

- 7.1205 Land allocated for development will no longer be subject to TVG applications. This allows the development plan to be implemented and would reduce the amount of abortive work carried out by the LPA rendered where proposed development is subsequently restricted or abandoned because of registration as a TVG.

#### Commons Registration Authorities

- 7.1206 The reforms will result in a reduction in the amount of applications to register a TVG within the authority area with the focus shifting to LDP preparation,

including open spaces assessments. This allows for a better concentration of resources by CRAs.

### Development Industry

- 7.1207 The submission of a TVG application creates uncertainty as to the future of a piece of land, particularly where it has entered the planning process. Option 2, while removing a potentially costly delay to developers, will create certainty for developers, LPAs and local communities.
- 7.1208 The submission of declarations will be entirely at the discretion of the landowner. They would be able to protect their land from registration and retain the development value in the land that would be lost as a result of registration as a TVG. The measure will also prevent the developer or landowner from having to place additional physical measures on a site to prevent public access and, which have been shown in the past, not to have been definitive in clarifying the status of the land.

### Applicants for TVG registration

- 7.1209 The ability to submit declarations should encourage landowners to allow continued recreational use of their land by the public, which is a benefit to the community.
- 7.1210 There is presently no fee for TVG applications to be submitted, allowing any potential applicant to apply to register a TVG at no cost. The reforms will not change this aspect of the process.
- 7.1211 Option 2 will require more, and earlier, participation by applicants and third parties in the planning system. Costs will be focussed on planning decisions or development plans, rather than the TVG application process. Opponents to a planning proposal would be expected to produce representations, write letters and attend any planning committee or development plan hearing. This cost is lower compared to that of making a TVG application, which requires significant legal input. These costs are not quantifiable.

### Third Parties

- 7.1212 The benefits are considered to be equal to those expected by applicant, or landowner, depending on their stance.

### **Justification for only 2 options**

- 7.1213 A third option has not been assessed. Option 2 was for both the exclusion of TVG applications for land which has entered the planning system and to introduce a system for landowner declarations. A third option has been considered of introducing a system for landowner declarations only. However, there are difficulties in assessing the impact that a system for declarations would have on the behaviour of developers or landowner. The closest available mechanism is the declaration under section 31(6) of the Highways



Act 1980. There is no available data on the frequency that this is used. The benefits and disadvantages of the declaration have been assessed at option 2. It can only be assumed that the declaration would cause a fall in submissions of in applications to register a TVG. Each application is estimated to cost £8,530 to a CRA, and £48,600 to developers. Whilst the level of any decrease in TVG applications cannot be predicted, there could be potential savings on the current situation to both developers and CRAs on a per application basis, should the declaration preclude TVG applications from being made.

### **Summary and preferred option**

- 7.1214 The current TVG registration system provides legal protection to land from development and interference on sites which have been used for recreational purposes by local or nearby residents for the preceding 20 years, or over.
- 7.1215 Registered TVGs can have positive impacts on people and communities, though promoting health and wellbeing, as well as providing a public good.
- 7.1216 There is however, evidence that the TVG registration system is being used as a method for preventing the development of land. The TVG registration system enables applications on sites which have planning permission, on which building work may have commenced or have been completed. It may also undermine development plans, in that a TVG may be registered on a site which has been previously allocated for development. The Commons Act and planning legislation are at cross purposes. Development which is considered acceptable under planning legislation can be subject to delays and abandonment with associated economic benefits. It also places a burden of substantial costs on developers and landowners.
- 7.1217 Landowners can also suffer a significant loss in the value of their land following registration as a TVG, given that it would be extremely difficult to develop that land thereafter. In those circumstances, a TVG can be proven to be a barrier to development<sup>138</sup>.
- 7.1218 Option 2 allows for continued recreational use of land by the public while giving landowners a proactive mechanism for working constructively with the community.
- 7.1219 Evidence from the survey of CRAs and published evidence in England shows that a significant proportion of TVG applications relate to sites where development has entered the planning system. Option 2 will bring clarity to the system where two application regimes currently do not interact with one another, and will focus the consideration of whether land is of a local recreational value at the planning stage. This will not preclude any application to register a TVG prior to a piece of land entering the planning system. Option 2 allows for instances where land is no longer in the planning system to be subject to a TVG application.

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<sup>138</sup> [Penfold; "Review of non-planning consents"; July 2010.](#)

7.1220 There are significant costs for all parties where registering a TVG, especially where it involves land which has already entered the planning system. Option 2 will have significant cost benefits to CRAs, developers and indeed potential TVG applicants.

7.1221 Option 2 is the preferred option as it will allow for applications to continue to be made to register TVGs, but will avoid two consenting processes going forward at the same time, adding to delays and costs for the development sector and confusion and lack of transparency for local communities.

*Table 7.40: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Saving from legislation</b>	<b>Comments</b>
Development Industry	£369,000	-£147,700	Annual Saving
CRA	£64,800	-£25,900	Annual Saving

7.1222 The summary of cumulative costs for the Bill are set out in Annex A

### Guidance

7.1223 There will be a cost, through the production of appropriate guidance, explaining the TVG proposals. These costs are estimated to be £50,000; this will be borne by the Welsh Government.

### **Financial Implications**

7.1224 The table at annex A sets out the total costs and savings identified in the RIA. It has not been possible to produce one overall estimate due to the different nature of the provisions which makes accurate comparisons impossible.

7.1225 The following categories of costs and savings have been identified:

- Annual costs and savings including transitional costs and savings where these can be estimated with a degree of confidence;
- Indicative costs and savings, for example where estimates are based on a limited number of examples or cannot be confidently scaled up to provide an all Wales estimate;
- One off costs and savings where a cost or saving will only be incurred if a subsequent Ministerial decision is made such a Direction or Order, and;
- Guidance costs to support implementation of the Bill and associated secondary legislation.

7.1226 A brief summary of the annual costs and savings is provided below for Welsh Government, local planning authorities and the development industry. For other costs and savings and impacts on other stakeholders please refer to the RIA and Annex A.

## **Annual costs and savings**

- 7.1227 Overall the RIA finds that the majority of costs incurred by the provisions in the Bill can be met through a modest increase in resources.
- 7.1228 The RIA identifies that the annual costs incurred by the provisions within the Bill are broadly in balance. The additional costs of £6 million are balanced by savings of £8 million. There is a limited redistribution of the additional costs and savings result between the Welsh Government, local planning authorities and the development industry.

### Welsh Government

- 7.1229 The RIA indicates that the annual net costs to the Welsh Government over 5 years of the provisions are estimated to be £409,000. The largest additional costs are incurred through the preparation of the National Development Framework, supporting the preparation of Strategic Development Plans, ongoing costs to operate the Development of National Significance (DNS) planning application system and establishment of a Non Validation Appeals procedure. These costs mainly relate to staff costs for Welsh Government and the Planning Inspectorate.

### Local planning authorities

- 7.1230 The RIA indicates that the annual net costs to Local Planning Authorities over 5 years of the provisions are estimated to be £877,000. The costs include transitional costs (£2.1 million) to move between the existing Local Development Plan system and the new Strategic Development Plan system and light touch LDPs in South East Wales. The situation arises because the cost savings from the new system will only commence following adoption of the SDP which is anticipated to be in 2020/21, from which point annual savings of around £524,000 should accrue each year to SE Wales LPAs. This estimate is highly sensitive to the stage at which existing LDPs have reached in the preparation or review process. It is also subject to influence by the wider proposals to reform local government in Wales. For this reason no estimate for the costs of preparing SDPs in Swansea or North East Wales has been included. The preferred approach for these areas may be the preparation of a LDP covering a merged authority or Joint LDP covering two or more authorities. A full assessment of the costs of a Strategic Development Plan for an area will be undertaken alongside preparation of the orders to establish the area. The Bill includes provision for the Strategic Planning Panels to borrow money from Welsh Government and a start up grant.
- 7.1231 Of the remaining costs with the exception of amendments to the appeals cost regime the remaining provisions either incur a saving or small cost to local planning authorities. In practice the amendment of the appeals cost regime is expected to result in behavioural change on the part of local planning authorities so this cost is unlikely to be incurred in practice.

## Development industry

- 7.1232 The development industry is likely to be a beneficiary of the provisions. The RIA indicates that the additional costs to sector over 5 years of the provisions is estimated to be in the region of £2.5 million with potential savings of £5.7 million providing a net saving of £3.2 million. This does not include any benefits which accrue more generally to the sector as a result of efficiency improvements, increased certainty or lower finance costs due to reduced delays. In terms of increased costs for the sector pre application community consultation may result in an additional cost of an estimated £1.5 million. It is already best practice for developers to undertake pre application community consultation and many do this. As consequence the true additional cost is likely to be significantly lower. The development sector will also experience additional costs to submit planning applications to Welsh Ministers in respect of infrastructure planning applications. These costs are estimated to amount to £670,000 over 5 years. The increased costs will be offset against increased certainty and timely more decisions.
- 7.1233 In terms of savings the development industry will benefit from the introduction of the non validation appeals system. This is estimated to save the sector over £2 million over 5 years. This does not include any savings through reduced delays in determining planning applications. Changes to decision notices to record discharge of conditions will also be of major benefit by reducing conveyancing costs significantly. This is estimated to be in the region of £3 million over 5 years.

## 8 Competition Assessment and Specific Impacts

### Competition Assessment

- 8.1 A competition filter test has been completed for the legislation, this is presented below:

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

- 8.2 A detailed consideration of the limited impact of the provision of the Planning (Wales) Bill on competition has been considered.

### Development Planning

- 8.3 The Planning (Wales) Bill contains provision for a National Development Framework, Strategic Development Plans, Local Development Plan provisions and Joint Planning Boards. These provisions are not expected to have an impact on competition within the development plans sector. The public sector, in the form of the Welsh Ministers and local planning authorities, will be responsible for implementing the changes to the development plan process rather than the private sector. The changes will impact on the ways those bodies interested in the development plans process interact with the development planning system; for example allowing the submission of consultation responses to a draft National Development Framework. They are not designed to impact on the competition of firms within the private sector.

## **Pre Application Procedure**

- 8.4 The reforms to pre-application processes include provisions related to pre application consultation, pre application services and statutory consultee substantive representations. These provisions are designed to improve the speed of decision making and quality of development proposals. They should also ensure any local issues are resolved at the earliest possible stages of the planning applications process. These changes would apply across the board to all those bodies involved in submitting, commenting on or determining planning applications and are not considered to have any competition impacts on specific bodies.

## **Applications to the Welsh Ministers**

- 8.5 Part 4 of the Planning (Wales) Bill includes provisions for Developments of National Significance and direct applications to the Welsh Ministers. The provisions will allow the Welsh Ministers to receive and consider certain types of planning applications. They will essentially ensure that planning applications are determined by the most appropriate body, in an efficient and comprehensive manner. They are not designed to impact on competition.

## **Development Management**

- 8.6 The Planning (Wales) Bill makes provision for a range of changes including LPAs to be notified when development begins and what consent is to be implemented, planning committees, decision notices and post submission amendments. There are no competition impacts because the legislation is designed to improve development management processes at a local planning authority level in terms of the procedures for determining applications. These provisions will provide greater consistency, simplicity and clarity to applicants (including firms) when undertaking the relevant processes in applying for planning permission and will not impact on competition.
- 8.7 The Planning (Wales) Bill removes the statutory requirement to submit a design and access statement with an application for planning permission. The Welsh Government remains committed to promoting good design of development that includes access for all through alternative means. As a result, whilst this measure should speed up the planning process it will not have an impact on competition.

## **Enforcement and Planning Appeals**

- 8.8 The enforcement provisions are intended to introduce a suite of improvements to the enforcement process, to secure prompt, meaningful action against breaches of planning control. They are not designed to impact on the competition of firms, provided that the firms adhere to planning controls.
- 8.9 The Planning (Wales) Bill contains provisions to improve the appeals process. These reforms include no variation of application after service of notice of an

appeal and a prohibition on the raising of new matters on appeal. These provisions are designed to speed up the determination of appeals in Wales, making the existing system more transparent, improving consistency and increasing certainty of decision timescales. To resolve disputes quickly a new appeal mechanism that deals solely with whether an application is valid is proposed. The proposals are not expected to have an impact on the competition of firms.

### **Town and Village Greens**

- 8.10 The provisions will prohibit applications being made to register land as a Town and Village Green where the land has entered the planning system. This would have limited impact on competition amongst firms.

### **Specific Impacts**

- 8.11 A series of impact assessments on the policy areas contained within the Planning (Wales) Bill have been completed as part of the Regulatory Impact Assessment.

### **Equality Impact Assessment**

- 8.12 The Welsh Government is bound by the Equality Act 2010, and the Wales-Specific Equality Duties Regulations, the Human Rights Act 1998 and the European Convention on Human Rights. An equality impact assessment on the Planning (Wales) Bill found largely positive impacts for vulnerable and protected groups. The proposal to modernise and improve the planning system and its practice, procedures and processes will benefit communities, some of whom are vulnerable.
- 8.13 The introduction a National Development Framework for Wales will provide an enabling tool, to encourage appropriate development opportunities by providing a statutory planning document setting out national land use priorities for the development of land, concentrate on land use issues of national significance. This will have a positive impact on all protected groups ensuring that national priorities are implemented and a standardised approach taken at local level.
- 8.14 Strategic Development Plans, Joint Planning Boards and Joint Local Development Plans will tackle issues which are larger than local issues, supporting how people live their lives rather than being confined to local planning authority boundaries. This cross boundary approach will address matters such as housing supply which will have a positive impact on for a range of protected groups including younger people, family groups, the elderly and those with a mental or physical disability and gypsy and traveller community, particularly where site provision is considered. The amendments to the Local Development Plan process will mean that Local Development Plans are in place and reviewed and up dated regularly. This will ensure that they are responsive to local issues and needs. Proposals for Local Development Plan Withdrawal will have both a positive and negative effect on

protected groups because it should stop local planning authorities from withdrawing a plan, on which planning decision are based, where there is no sound reason.

- 8.15 The pre application community consultation provisions enhance engagement by making it easier for citizens to influence the future of their communities. This provides protected groups with the right to have their say with regard to development that will affect them, their locality and their individual circumstances. Early, meaningful and effective engagement will build understanding between developers and communities. It also allows any significant concerns to be addressed early on in the process, ensuring that developers have the opportunity to taken full account of the views of groups.
- 8.16 The proposals in respect of decision notices will benefit local communities, in identifying the up-to-date details of development that has been granted. In the case of the notification when development begins these changes provide greater clarity, transparency and certainty for all stakeholders, including local communities, in the development management process, in respect of which planning permission is being implemented.
- 8.17 It is acknowledged that good design and inclusive access for all is a fundamental objective for appropriate development. The removal of the specific requirement for the submission of a design and access statement from primary legislation is unlikely to have an effect on vulnerable groups such as those who are physically, disabled, children, young people and older people. A design and access statement will still be required while a full review is undertaken.
- 8.18 The enhanced enforcement provisions will reduce the inequalities that can exist between other vulnerable groups and applicants or developers within the planning system. This is because the provisions will help to overcome issues of frustration, delay and exploitation of loopholes in the system.

### **United Nations Conventions on the Rights of the Children**

- 8.19 The Rights of Children and Young Persons (Wales) Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy. The Planning (Wales) Bill will have a positive impact on the rights of the child. For example notification of an intention to withdraw a Local Development Plan has a positive impact on the children's rights because local planning authorities will only be able to withdraw a plan if it is unsound. This will reduce the number of development plans being withdrawn without good reason and ensure that a policy framework for decision making is in place in the particular authority area. The proposed changes to pre application community consultation will enhance public consultation and give children an opportunity to comment on planning applications and policy development. The proposed amendments to applications for the registration of land as a town and village green could have an effect on the children's right to relax and play. The proposals will prohibit applications being made to register land as a town and



village green where the land has entered the planning system. We also propose to enable landowners to submit declarations to the commons registration authority, rendering land immune from registration and allowing continued public access, provided that certain criteria are met.

### **Impact on the Welsh language**

- 8.20 The Welsh Government's Welsh Language Scheme requires that an assessment of the impacts of proposed primary legislation on the Welsh Language be carried out. New planning procedures proposed as part of the Bill, including development plans procedures and development management will be delivered bilingually in accordance with local or national government Welsh Language Standards or Schemes. Other improvements including, the introduction of the National Development Framework and Strategic Development Plans will have a positive impact by providing a mechanism to consider issues such as the Welsh language on a wider basis than a single authority reflecting the patterns of Welsh language use. Revised Technical Advice Note 20 (Planning and the Welsh Language) advises local planning authorities to consider Welsh Language requirements during sustainability appraisal of Local Development Plans and will be extended to include the National Development Framework and Strategic Development Plans. Proposed improvements to the enforcement system could provide benefits by providing improved procedures to regulate unlawful developments which have a negative impact on Welsh speaking communities. These proposals to reform the planning system will enhance existing planning processes which already take into account the impacts of development on the Welsh Language through the Local Development Plan process.

### **Sustainable Development**

- 8.21 As part of the policy impact screening for the Bill, consideration has been given to the five headline indicators in the Welsh Government's Sustainable Development Scheme. These are as follows:
- Sustainable Resource Use;
  - Sustaining the Environment;
  - A Sustainable Economy;
  - A Sustainable Society; and
  - The Wellbeing of Wales
- 8.22 The introduction of the National Development Framework for Wales will provide an enabling tool to encourage appropriate sustainable development opportunities by providing a statutory planning document to set out national land use priorities for the development of land. The proposals for Strategic Development Plans and providing Welsh Ministers with the power to direct two or more authorities to prepare a Joint Local Development Plan will allow for the taking into account of cross local authority boundary planning issues where there is a evidenced need to do so; thereby promoting cross-boundary and strategic consideration of sustainable development matters relating to planning. The proposed improvements to the Local Development Plan

process will help to strengthen the considerations of social, economic and environmental aspects of sustainable development when planning at a local level and maintain a plan-led approach to planning decisions allowing sustainable development to be taken into account fully.

- 8.23 Allowing a Joint Planning Board to perform all modern local planning authority functions will provide a tool to create resilient delivery bodies with access to a full range of technical and specialist skills. They will also be able to consider opportunities and costs arising from development over a wider area, allowing more sustainable outcomes to be identified and delivered.
- 8.24 The proposals for pre-application community consultation and pre-application advice as part of the proposed improvements to the development management process should enable the economic, environmental and social impacts of development to be considered at the earliest possible stages of the planning process and ensure these concerns are avoided as part of the final design of schemes, leading to better sustainable development outcomes.
- 8.25 The proposals for certain types of planning applications to be determined by the Welsh Ministers under the proposals for Developments of National Significance applications process will ensure an efficient mechanism for their determination, allowing widely occurring sustainable development benefits (such as climate change mitigation) to be considered alongside local impacts. This new application process will demonstrate that all aspects of sustainable development are thoroughly considered as part of the determination process for applications falling under this particular category. Linked to Developments of National Significance, the proposals to allow developers the option to make connected applications to the Welsh Ministers may have a minor positive impact on sustainable development considerations as these will be considered in the round by a single consenting authority, should developers choose for the Welsh Ministers to consider connected applications.
- 8.26 Allowing a planning application to be made direct to the Welsh Ministers where a local planning authority has been designated as 'poorly performing' will assist in providing a tool to secure faster decision making on planning applications in areas where the performance of the local planning authority has been poor. This will provide developers with confidence that their planning applications will be dealt with efficiently. Positive social and economic sustainable development benefits will be secured by providing developers with the confidence to invest in development which meets identified needs.
- 8.27 Further, the requirements for statutory consultees to provide substantive and timely responses to planning applications will help to ensure they make a positive contribution to the development process by ensuring they provide timely information in relation to their areas of knowledge or interest. Other improvement to the process for determining planning applications by committee or where they are delegated to officers to determine should ensure an efficient and consistent process for the determination of planning applications. This could assist in supporting appropriate sustainable development opportunities at the local level.

- 8.28 The proposed improvements to the enforcement system could provide sustainable development benefits by providing improved procedures to regulate unlawful developments which have a negative impact on sustainable development considerations.
- 8.29 The proposals for Town and Village Greens aim to ensure clarity and consistency in the processes for designation of land as a town and village greens and proposals for new development. They will support sustainable development outcomes by reconciling the overlap between the Town and Village Green registration process and the planning system.

## **Rural Proofing**

- 8.30 The proposed changes to the planning system will impact on both urban and rural areas.
- 8.31 The changes to development planning through the introduction of a National Development Framework for Wales, Strategic Development Plans, where appropriate and the ability for Welsh Ministers to be able to direct two or more authorities to prepare a Joint Local Development Plan will enable the identification of national, strategic and cross-boundary rural development policies and allocations.
- 8.32 Similarly, one of the proposed provisions for the development management process is for applicants to undertake pre-application consultation on all new development proposals over a certain size. These changes could impact positively on rural groups within rural locations (for example land based industries such as the agricultural sector and small scale rural businesses) as they will be consulted upon any new development proposals at the earliest possible stage and will be able to have their say to ensure any new development is appropriate for a rural area.
- 8.33 The proposals for a new Development of National Significance planning application process will impact on rural and urban areas. As the types of development to be considered under these proposals will be determined by the Welsh Ministers rather than by the local planning authority, the decision making body is likely to be further removed from the location of the development. This could result in additional costs for applicants accessing the Welsh Ministers. However, the purpose of allowing the Welsh Ministers to determine these types of applications is to allow widely occurring sustainable development benefits, such a climate change mitigation, to be considered alongside local impacts. This new application process will demonstrate that all aspects of sustainable development are thoroughly considered as part of the determination process for applications falling under this particular category.
- 8.34 Improvements to the enforcement process, including the power to decline to determine retrospective applications, will help to prevent unlawful development in rural locations.

## **Health and Wellbeing**

- 8.35 Strategic Development Plans will provide a framework for decision making at larger than local scale, such as housing land supply or Gypsy Traveller site provision. Coupled with the introduction of a National Development Framework for Wales and the Local Development Plan improvements, this will have a positive impact on the standard of living of groups, such as children and young people and gypsy and traveller community, and on their physical and mental health.
- 8.36 Pre application community consultation will have a positive impact on social and community influences on health as a result of the enhanced citizen power and influence in respect of developments within communities. The consultation will take place at the earliest possible stage in the planning application process. Involving the community in such a way will empower citizens and allow them to influence development in their locality reducing the occurrence of mental and medical illnesses where communities feel that development has been imposed upon them rather than being a consultative process. Positive health impacts are likely to come from increased awareness of the rights and responsibilities of planning applicants, local planning authorities and the community, leading to less conflict, fewer disputes, less stress and less frustration for people in these groups.
- 8.37 The removal of the specific legal requirement to provide a design and access statement with a planning or listed building application from primary legislation will have neither a positive nor a negative health impact because general powers will be used to require the submission of design and access statements until such time as a full review of the problems and benefits has been completed.
- 8.38 The proposed amendments to applications for the registration of land as a town and village green could have an impact on children's physical activity and the living/environmental conditions affecting the health of communities, such as the attractiveness of an area and greens. The proposal makes changes to the registration of land as a town and village green where the land has already entered the planning system and allows landowners to submit declarations to the commons registration authority, rendering land immune from registration, provided that certain criteria are met. Where this proposal facilitates the availability of land for the building of housing this will have a positive impact on living/environmental conditions affecting health and will raise the standard of living in the particular area. Housing in the right location can secure health benefits.

## **Impact on Privacy**

- 8.39 The privacy impact assessments found that the proposed changes to the development plans process will result in new data requirements for those commenting on development plans, specifically with regards to commenting on the proposed National Development Framework and Strategic Development Plans. However, these changes will result in the processing of

personal data along similar lines to current processes carried out by those bodies preparing and consulting on proposed development plans.

- 8.40 Changes to the development management system will result in changes or new ways of processing data for those who apply for planning permission or for those commenting on planning applications (this would include details of prospective applicants for planning permission being made publicly available before a planning application is submitted rather than once the application has been processed as currently occurs). However, the processing of this data is not considered to impact on the privacy of individuals to the extent that it is substantially different to current procedures that occur during the consideration of a planning application. Rather, the proposals are designed to ensure overall efficiency improvements to the planning applications process. Similarly, for the proposed changes to the enforcement system, it is not considered that procedures for the processing of data on individuals will be substantially different to current procedures for when enforcement action is taken.
- 8.41 The Town and Village Green permitting proposals for allowing landowners to submit declarations will result in the processing of personal data on landowners in order to declare they are public access to land with their consent; but it will be their choice as to whether they wish to declare land for this purpose.

### **Impact on the voluntary sector**

- 8.42 A wide range of voluntary sector organisations engage in the planning system and some receive funding from the Welsh Government to support the built environment sector and other users of the Planning system in Wales. It is possible that they could be affected by the provisions of the Planning (Wales) Bill as the number of users of the planning system seeking their support may increase and they will be expected to support the provisions in partnership with local planning authorities. The emphasis on pre application consultation will increase community engagement at the earliest possible stage in the planning process. This early involvement could reduce the complexity or difficulty planning applicants and communities can encounter at a late stage, when there is little scope to amend the application for planning permission. Similarly the removal of the specific legal requirement to provide a design and access statement with a planning or listed building application from primary legislation could have an impact on voluntary organisations which support vulnerable groups such as the blind and disabled. General powers will be used to require the submission of design and access statements until such time as a review of their problems and benefits has been completed. This should reduce the long term impact on such voluntary organisations.

## **9 Post implementation review**

- 9.1 The effect of the Planning (Wales) Bill will be measured in a number of ways. Methods to be used will include research and evaluation and data collection techniques.
- 9.2 A programme of monitoring and evaluation activity will be developed to correspond key activities and dates. For some elements, such as improvements to the planning application process, these will be monitored quarterly, and for others it will be necessary for a reasonable period of time to have elapsed before the outcome of the provisions can be assessed for example following adoption of the new suite development plans. The proposed evaluation and monitoring will reflect these different timescales.
- 9.3 The proposed monitoring and evaluation of the Planning (Wales) Bill is outlined below.

### **Development Planning**

- 9.4 The legislation will be evaluated through delivery of an up to date plan led system throughout Wales at all levels, including collaborative working practices.
- 9.5 The Welsh Government intends to commission research into the effectiveness of implementation of this legislation after an appropriate period, expected to be following adoption of the National Development Framework, Strategic Development Plans and subsequent round of Local Development Plans.

### **Applications to Welsh Ministers**

#### Developments of National Significance

- 9.6 Ministerial targets for the administration of the DNS process will be set annually. Formal monitoring of the targets will be achieved through the submission of annual returns to the Welsh Ministers.
- 9.7 An overall evaluation project is proposed within 3 years of implementation to measure the outcome of the process.

## Optional Direct Applications

- 9.8 Where local planning authorities are designated by the Welsh Ministers due to their poor performance, applicants will have the option to submit applications (anticipated to be for major development) direct to the Welsh Minister instead of the local planning authority. Local planning authorities will be monitored by the Welsh Government against set criteria that will be used to assess whether or not they are to be designated due to their poor performance. The data collection undertaken by the Welsh Government through existing quarterly surveys of all local planning authority development management services, and the annual performance reports that local planning authorities will submit to the Welsh Ministers, will be used to monitor their performance for the purposes of this legislation. The criteria to be used by the Welsh Ministers to define poor performance are yet to be established, although it is anticipated that they will include timeliness and quality of decision making.
- 9.9 Formal monitoring of the Planning Inspectorate's performance in relation to these applications will be examined through the submission of annual returns to the Welsh Ministers.
- 9.10 There will also be formal monitoring of the effect and impact of the legislation on the performance of development management services across Wales and the benefits that it gives applicants.

## **Pre-application Procedure and Development Management**

- 9.11 The effect of this legislation on the planning application process will be examined through monitoring undertaken by the Welsh Government. The data will be collected through the existing quarterly surveys of all local planning authority development management services.
- 9.12 Where the legislation has a direct impact on statutory consultees in the planning application process, the Welsh Government will monitor its effect through performance reports that the consultees will be required by legislation to produce and submit to the Welsh Ministers.
- 9.13 As part of the Law Commission's 12<sup>th</sup> Programme of Law Reform they will undertake a wide review of the legislation contained in the Town and Country Planning Act 1990 in respect of the development management system in Wales. The information gathered and the recommendations made by the Law Commission as a result of this three year review programme will also assist in our monitoring of the effects and impacts of the proposed legislation.

## **Enforcement and Appeals**

### Enforcement

- 9.14 No measures are currently in place to monitor, on a routine basis, the effect and impact of the legislation on the enforcement system. To ensure that this monitoring can be undertaken, the following measures are therefore proposed:
- To extend the existing quarterly surveys undertaken of all local planning authority development management services to collect data on certain aspects of the enforcement system, principally relating to the timeliness of the system.
  - To undertake an evaluation project after 4 years, anticipated to be undertaken within 4 years to assess the implementation of the legislation.

### Appeals

- 9.15 The effectiveness of the legislation will be demonstrated through monitoring undertaken by the Planning Inspectorate to ensure that appeals are handled efficiently
- 9.16 The Planning Inspectorate is currently required to submit annual returns to the Welsh Ministers in respect of their performance in determining planning appeals. This arrangement is not expected to change.

## **Town and Village Greens**

- 9.17 It is proposed to monitor the impacts of the legislation through annual statistical returns from Commons Registration Authorities. The collected data is intended to demonstrate whether the legislation has the desired impact of precluding an application to register a Town or Village Green where land has entered the planning system. It is also proposed to monitor the level of usage of landowner declarations.



## **Part 3 – Explanatory Notes**

Explanatory notes are included in the following section.

Throughout these Explanatory Notes the following abbreviations have been used:

<b>CA:</b>	<b>Commons Act 2006</b>
<b>HSA:</b>	<b>Planning (Hazardous Substances) Act 1990</b>
<b>LBA:</b>	<b>Planning (Listed Buildings and Conservation Areas) Act 1990</b>
<b>PCPA:</b>	<b>Planning and Compulsory Purchase Act 2004</b>
<b>TCPA:</b>	<b>Town and Country Planning Act 1990</b>

## **10 Explanatory Notes**

### **PLANNING (WALES) BILL**

- 10.1 These Explanatory Notes relate to the Planning (Wales) Bill as laid before the National Assembly for Wales on 6 October 2014.
- 10.2 They have been prepared by the Welsh Government's Planning Division in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales.
- 10.3 The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.

### **PART 2**

#### **Development Planning**

##### **Section 2: Preparing and revising the National Development Framework for Wales**

- 10.4 This section replaces section 60 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) (which provided for the Wales Spatial Plan) with sections 60 to 60C. Section 60 introduces a statutory basis for the Welsh Ministers to prepare and publish a National Development Framework for Wales. The National Development Framework will set out national policies in relation to the development and use of land in Wales, reflecting Government priorities, as well as designating Developments of National Significance (for developments of national significance, see notes on Part 4, below).
- 10.5 Section 60A requires the Welsh Ministers to prepare a statement of public participation which must set out how and when the consultation will take place. The Welsh Ministers may review this statement at any time.
- 10.6 Section 60B requires the Welsh Ministers to prepare a sustainability appraisal of the National Development Framework. The Welsh Ministers must carry out consultation on the National Development Framework and submit it to the National Assembly for Wales for scrutiny.
- 10.7 Section 60C requires the Welsh Ministers to keep the National Development Framework under review and enables them to revise it. If no revision of the Framework is published or laid before the Assembly in draft within a specified period, the Welsh Ministers must publish a statement stating whether they think the Framework should be revised and giving reasons. The Framework must be reviewed every five years.

### **Section 3: Designating strategic planning areas and establishing Strategic Planning Panels**

- 10.8 This section inserts the sections 60 D to 60G into the PCPA 2004. Section 60D enables the Welsh Ministers to make regulations designating a strategic planning area and establishing a Strategic Planning Panel for that area. Section 60D introduces Schedule 2A. Schedule 2A includes provision about the membership, administration and the financial arrangements of a panel. Before making regulations, the Welsh Ministers must have issued a direction under section 60E and the responsible authority must have either submitted a proposal for an area to be designated or have failed to do so within the specified period. (These requirements do not apply to regulations which amend or revoke previous regulations designating a panel.) The Welsh Ministers must also have undertaken consultation, if required.
- 10.9 The strategic planning area must include all of one local planning authority's area and all or part of at least one other authority's area. Section 60E enables the Welsh Ministers to direct one or more local planning authority to submit a proposal for a strategic planning area. The Welsh Ministers must set out their reasons for the direction. The local planning authority or authorities receiving the direction will be known as the "responsible authority". The responsible authority will be required to prepare a proposal for the designation of a strategic planning area, consult on its proposal and submit all of the information to the Welsh Ministers within a set time period. This time period may be extended if agreed by the Welsh Ministers. The Welsh Ministers consider the proposal, may agree the submission, establish the Strategic Planning Panel and define the area.
- 10.10 Section 60F sets out how Welsh Ministers are to proceed if they do not agree with the proposal submitted by the responsible authority; if no proposal has been submitted in the set time period by the responsible authority; or previous regulations are to be amended or revoked. If the Welsh Ministers wish to establish a different strategic planning area from that proposed by the responsible authority, they must consult those local planning authorities within the area that they intend to designate. If the Welsh Ministers propose to change an existing strategic planning area, the Welsh Ministers must consult the local planning authorities within that area. Section 60G provides that the Welsh Ministers may request information from local planning authorities that they need to carry out their functions relating to the designation of strategic planning areas.

### **Section 4: Strategic planning areas: survey**

- 10.11 This section inserts section 60H into the PCPA 2004. Section 60H provides that Strategic Planning Panels must keep under review matters which are expected to affect the planning of the strategic planning area. It does this by applying section 61 of the PCPA 2004 to Strategic Planning Panels. Section 61(2) lists matters such as the principal characteristics of an area, purposes for which land is used, population, communications and transport systems.

## **Section 5: Preparing and revising Strategic Development Plans**

- 10.12 This section inserts section 60I into the PCPA 2004. Section 60I makes provision for a Strategic Planning Panel to prepare and adopt a Strategic Development Plan. A Strategic Development Plan sets out objectives in relation to the use and development of land and general policies for the implementation of those objectives. The Strategic Development Plan must conform with the National Development Framework. The Strategic Planning Panel are to have regard to certain matters when preparing a Strategic Development Plan. Strategic Development Plans must have a sustainability appraisal. The Welsh Ministers may make regulations about the form and content of Strategic Development Plans. The Welsh Ministers will have the power to intervene through a direction or by calling the plan in for its approval. The Strategic Development Plan has effect as a development plan for the period specified in the plan.
- 10.13 Section 60J sets out how relevant sections in Part 6 of the PCPA 2004, which provides for how a Local Development Plan is produced, will apply to Strategic Development Plans. Most of those sections will apply in the same way that they apply to Local Development Plans, with the result that the overall process for preparing, adopting and revising a Strategic Development Plan will be the same as that for a Local Development Plan. Certain details of the process will be set out in regulations made under the various powers conferred by Part 6.

## **Section 6: Conformity of certain plans and schemes with National Development Framework and Strategic Development Plan**

- 10.14 This section amends section 62 of the PCPA 2004. It requires a Local Development Plan to conform with the National Development Framework and any Strategic Development Plan for the local planning authority's area.
- 10.15 This section also amends section 83 of the Town and Country Planning Act 1990 (TCPA 1990) in relation to simplified planning zone schemes made by local planning authorities. (Section 82 of the TCPA 1990 provides that a simplified planning zone is an area in which a simplified planning zone scheme is in force. Planning permission is granted in any part of the zone for development specified in the scheme or for development of any class specified in regulations.) Section 6 requires a simplified planning zone scheme in Wales to conform with the National Development Framework and any Strategic Development Plan for any strategic planning area within the simplified planning zone

## **Section 7: Duty to consider whether to review Local Development Plan**

- 10.16 This section inserts section 68A into the PCPA 2004 to provide that following publication or revision of the National Development Framework; or publication or revision of a Strategic Development Plan, a local planning authority must consider whether to carry out a review of its Local Development Plan.

10.17 This section also makes a consequential amendment to section 69 of the PCPA 2004. (Section 69 deals with reviews of local development plans.)

### **Section 8: National Development Framework and Strategic Development Plan to form part of development plan**

10.18 This section amends section 38(4) of the PCPA 2004 so that the development plan for an area of Wales consists of the National Development Framework, the Strategic Development Plan and the Local Development Plan. The effect of the amendment is that local planning authorities must have regard to all three plans when making planning decisions. If there is a conflict between the three development plans, section 38(5) of the Act 2004 provides that the conflict is resolved in favour of the most recent document.

### **Section 9: Land affected by National Development Framework or Strategic Development Plan**

10.19 Section 9 inserts references to the National Development Framework and Strategic Development Plan into Schedule 13 of the TCPA 1990, which relates to planning blight. This section also confers compulsory purchase powers on the Welsh Ministers where a blight notice has been served in respect of land identified for certain purposes in the National Development Framework.

### **Section 10: Period for which Local Development Plan has effect**

10.20 This section amends section 62 of the PCPA 2004 to require a local planning authority to specify the period of its Local Development Plan, after which time the plan will cease to be a development plan. It gives the Welsh Ministers the power to make regulations to make provision about the plan period.

### **Section 11: Withdrawal of Local Development Plan**

10.21 This section replaces section 66 of the PCPA 2004 with a new section 66. It gives the Welsh Ministers the power to direct a local planning authority to withdraw its Local Development Plan at any time before the plan is adopted. The Welsh Ministers must give reasons for the direction.

10.22 This section also inserts section 66A into the PCPA 2004 which sets out how a Local Development Plan can be withdrawn if there is no direction from the Welsh Ministers.

10.23 Under the new section a local planning authority may withdraw its Local Development Plan before it is adopted as long as the Welsh Ministers have not intervened under section 65 (4) (intervention by the Welsh Ministers) or section 71 (Welsh Ministers' default power). The new section introduces further restrictions on withdrawing a plan that has reached certain stages in the Local Development Plan process.

- 10.24 Once a plan has reached a stage specified in regulations, but before it has been submitted for independent examination the local planning authority must notify the Welsh Ministers of its intention to withdraw its Local Development Plan. The Welsh Ministers will then have a period of time to decide whether to use their intervention powers. The Welsh Ministers will have the power to request further information from the local planning authority and extend the period for consideration. If the Welsh Ministers do not intervene the local planning authority will be able to withdraw its Local Development Plan.
- 10.25 After the Local Development Plan has been submitted for independent examination, it can be withdrawn only on the recommendation of the examiner and if the Welsh Ministers have not overruled this recommendation.
- 10.26 The Welsh Ministers may make regulations to set out how notices and directions are given and specify the notice period.

### **Section 12: Welsh Ministers' power to direct preparation of joint Local Development Plan**

- 10.27 This section amends section 72 of the PCPA 2004 to allow the Welsh Ministers to direct two or more local planning authorities to produce a joint Local Development Plan and require them to state their reasons for doing so.
- 10.28 The authorities receiving a direction must act jointly in exercising their functions relating to Local Development Plans (including the functions of preparing, adopting and revising a Local Development Plan). There are other amendments which deal with the situation where a direction is withdrawn in relation to one or all of the authorities (by applying existing provisions about what happens if an authority withdraws from an agreement to prepare a joint Local Development Plan).

### **Section 13: Joint planning boards: functions relating to surveys and Local Development Plans**

- 10.29 The TCPA 1990 provides the Welsh Ministers with powers to establish a joint planning board as the local planning authority for two or more areas each of which is the whole or part of a Welsh county or county borough.
- 10.30 This section amends section 78 of the PCPA 2004 to enable a joint planning board to prepare a Local Development Plan and act as a charging authority for the purposes of the community infrastructure levy for its district. It does this by making a joint planning board a local planning authority for the purpose of Part 6 of the PCPA 2004.

### **Section 14: development planning: further amendments**

- 10.31 This section introduces Schedule 2. Schedule 2 contains consequential amendments to various Acts.

## **PART 3**

### **Pre-application procedure**

#### **Section 15: Requirement to carry out pre-application consultation**

- 10.32 This section inserts section 61Z into the TCPA 1990
- 10.33 Section 61Z requires pre-application consultation to be carried out by those intending to apply for permission for development of a type specified in a development order made by the Welsh Ministers. The section requires the proposed application to be publicised in a way that brings the proposal to the attention of neighbours (persons who own or occupy premises in the vicinity of the development site).
- 10.34 Section 61Z enables the Welsh Ministers, by means of a development order, to specify other persons who must be consulted by the applicant about the proposed application.
- 10.35 The duty will not apply to urgent Crown development or any other cases that may be specified in a development order.
- 10.36 Section 61Z confers power on the Welsh Ministers to make further provisions in a development order about the consultation process, including the form and content of consultation documents; information and other materials that are to be provided to neighbours and specified consultees; and timescales.
- 10.37 The section also enables the Welsh Ministers to require specified consultees to respond to the consultation in a particular manner and within a particular time, and to report to the Welsh Ministers on their compliance with any such requirements.
- 10.38 This section also inserts subsections (9), (10) and (11) into section 62 of the TCPA 1990.
- 10.39 These new subsections provide that the Welsh Ministers must require in a development order that a consultation report accompanies planning applications where the applicant has been required to carry out pre-application consultation. They set out the particulars that must be contained in the report, including the details of the pre-application consultation that has been undertaken by the applicant, the responses received and how the responses have been taken into account by the applicant. A development order may also make provision about the form and content of the consultation report. The effect of this is that an applicant must carry out consultation under section 61Z, where required to do so, before making an application.

## **Section 16: Requirement to provide pre-application services**

- 10.40 This section inserts sections 61Z1 and 61Z2 into the TCPA 1990.
- 10.41 Section 61Z1 gives the Welsh Ministers the power to make regulations about the provision of pre-application services by local planning authorities or the Welsh Ministers.
- 10.42 The regulations may set out when pre-application services are required to be provided; the nature of the services to be provided; and requirements for publishing information and documents relating to the provision of the services.
- 10.43 Section 61Z2 confers power on the Welsh Ministers to make regulations that require local planning authorities and the Welsh Ministers to retain records of pre-application services, and to publish information on the type of pre-application services provided.

## **PART 4**

### **Applications to the Welsh Ministers**

#### **Section 17: Developments of national significance: applications for planning permission**

- 10.44 This section inserts sections 62D and 62E into the TCPA 1990.
- 10.45 Section 62D requires that planning applications for ‘Developments of National Significance’ (“DNS”) are to be made to the Welsh Ministers. A DNS application is an application for planning permission (other than outline planning permission) for the development of land in Wales, where the development to which the application relates is of national significance.
- 10.46 It allows the Welsh Ministers to ascribe DNS status to a development in two ways. Firstly, power is conferred on the Welsh Ministers to prescribe in regulations criteria which establish what constitutes a DNS. A development in Wales will be a DNS if it meets those criteria. Secondly, a development in Wales will be a DNS if it is specified by the Welsh Ministers in the National Development Framework.
- 10.47 An application for planning permission to vary conditions attached to a previous planning permission is not to be treated as an application for DNS unless it is of a description prescribed in regulations by the Welsh Ministers.
- 10.48 Section 62E deals with the notification of an application which is proposed to be made under section 62D. It requires a person who proposes to make a DNS application to notify the Welsh Ministers. The Welsh Ministers may make provision, in a development order, as to the form and content of notification, information that is to accompany the notification, and the way and time in which the notification is to be given.



- 10.49 This section also requires that the Welsh Ministers, on receiving notification, to give notice to the person proposing the application that the notification has been accepted.
- 10.50 The Welsh Ministers may make provision in regulations about the giving of such notice. This may include provision about the form and contents of the notice and the way in which and the period within which it is to be given.
- 10.51 Any step taken in respect of an application under section 62D before such notice has been given by the Welsh Ministers will not constitute consultation with any person about the application. This means that the Welsh Ministers must be notified of proposed applications before consultation takes place.

### **Section 18: Developments of national significance: secondary consents**

- 10.52 This section inserts sections 62F, 62G and 62H into the TCPA 1990.
- 10.53 Section 62F allows the Welsh Ministers to make a decision on a consent which they consider to be connected to an application for DNS and which they consider should be made by them instead of the normal consenting authority. A decision on a secondary consent is final.
- 10.54 Section 62G gives power to the Welsh Ministers to give directions to the normal consenting authority to do things in relation to a secondary consent. The Welsh Ministers may make regulations about the manner in which a secondary consent is dealt with by the Welsh Ministers, including consultation arrangements. Regulations may provide for other enactments or requirements in respect of secondary consents either to apply with changes or not to apply, where decisions are to be made by the Welsh Ministers.
- 10.55 Section 62H defines a secondary consent and when it is connected to an application for DNS. The Welsh Ministers will have power to prescribe secondary consents in regulations.

### **Section 19: Developments of national significance: local impact reports**

- 10.56 This section inserts sections 62I, 62J and 62K into the TCPA 1990.
- 10.57 Section 62I makes provision about the submission of a local impact report in relation to applications under section 62D. The Welsh Ministers must give notice to each relevant local planning authority requiring a local impact report in respect of the application in question. An authority to which notice is given must comply with it.
- 10.58 A local planning authority is a 'relevant local planning authority' if all or part of the land to which the application relates is in the authority's area.
- 10.59 Section 62J places a duty on the Welsh Ministers to have regard to the contents of any local impact report submitted to them by a relevant local planning authority.

- 10.60 It also enables a local planning authority that is not a relevant local planning authority to submit a voluntary local impact report in respect of an application. The Welsh Ministers must similarly have regard to such a report in dealing with an application.
- 10.61 A power is conferred upon the Welsh Ministers to make provision in a development order about the submission of voluntary local impact reports.
- 10.62 Section 62K provides that a local impact report is a report in writing that gives details of the likely impact of the proposed DNS and secondary consents on the area of the authority. The report must comply with any requirements specified in a development order.

## **Section 20: Option to make application to Welsh Ministers**

- 10.63 This section inserts sections 62L and 62M into the TCPA 1990.
- 10.64 Section 62L enables applications for planning permission and applications for reserved matters approval to be made directly to the Welsh Ministers, where the local planning authority to whom the applications would otherwise have been made has been designated by the Welsh Ministers.
- 10.65 The Welsh Ministers may prescribe in regulations the types of development to which the right to make such an application applies.
- 10.66 The Welsh Ministers must publish the criteria to be applied in designating a local planning authority and in revoking a designation.
- 10.67 Section 62M applies where an application is made to the Welsh Ministers under section 62L. Where a connected application would otherwise have been made to the local planning authority or hazardous substances authority, this section enables the application to be made directly to the Welsh Ministers.
- 10.68 An application is a 'connected application' if it is made under the Planning Acts (these being the TCPA 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Consequential Provisions) Act 1990), relates to land in Wales and is connected with the application made under section 62L. The section enables the Welsh Ministers to describe in regulations the types of connected applications that may be made to them.
- 10.69 Where the Welsh Ministers consider an application is not connected with the application made under in section 62L or is connected but should not be determined by them, the Welsh Ministers must refer the application to the authority to which it would normally have been made. The application is then determined by that authority.

## **Section 21: Further provision about applications made to Welsh Ministers**

10.70 This section inserts sections 62N and 62O into the TCPA 1990.

10.71 Section 62N states that a decision of the Welsh Ministers on an application made to them under sections 62D, 62L and 62M will be final (resulting in no right of appeal to the Welsh Ministers). It also enables Welsh Ministers to direct a local planning authority or hazardous substances authority to do things in relation to an application made under those sections.

10.72 Section 62O imposes a duty on the Welsh Ministers to notify a community council of applications made to them under sections 62D, 62F, 62L or 62M where they relate to land in the community council's area (and where the community council have previously asked their local planning authority to be notified of applications submitted to that authority). It also requires a local planning authority, if requested to do so by the Welsh Ministers, to let the Welsh Minister know which community councils have asked to be notified.

## **Section 22: Procedure for considering application made to Welsh Ministers**

10.73 This section inserts section 62P into the TCPA 1990.

10.74 Section 62P will apply where an application has been made to the Welsh Ministers under section 62D, 62L or 62M and to applications for secondary consents under section 62F.

10.75 The Welsh Ministers must make a determination as to the procedure by which the application is to be considered before the end of a period prescribed in regulations. That determination may be varied.

10.76 The procedure will be by way of a local inquiry, a hearing or representations in writing, or a combination of those procedures.

10.77 The Welsh Ministers must publish the criteria that are to be applied in making a determination as to the procedure.

## **Section 23: Power to make provision by development order in respect of applications to Welsh Ministers**

10.78 This section inserts section 62Q into the TCPA 1990.

10.79 It enables the Welsh Ministers to make provision in a development order about the way in which applications made to them under sections 62D, 62F, 62L or 62M are to be dealt with. This includes making provisions about consultation by the Welsh Ministers and variation of applications.

## **Section 24: Developments of national significance and applications made to Welsh Ministers: exercise of functions by appointed person**

10.80 This section inserts section 62R into the TCPA 1990.

10.81 Section 62R inserts Schedule 4D into the TCPA 1990. Schedule 4D provides that, unless the Welsh Ministers direct otherwise in a particular case, an appointed person exercises functions in relation to an application made to the Welsh Ministers under sections 62D and 62F. The appointed person also determines applications submitted directly to the Welsh Ministers under sections 62L and 62M, unless the Welsh Ministers direct otherwise. It is anticipated that persons will be appointed from the Planning Inspectorate Wales.

10.82 Schedule 4D sets out the functions of the appointed person. They will have the same powers and duties as the Welsh Ministers in relation to their determination of an application. The Schedule also allows the Welsh Ministers to recover any case for decision by them from an appointed person.

## **Section 25: Applications to Welsh Ministers: further amendments**

10.83 This section makes consequential amendments to the TCPA 1990 at Schedule 4. Provisions in Schedule 4:

- a. enable the Welsh Ministers by means of development order to apply, with or without modifications, any provisions or requirements imposed by legislation, to applications that can be made to the Welsh Ministers under sections 62D, 62L or 62M;
- b. provide that neither a simplified planning zone nor an enterprise scheme has the effect of granting planning permission for development that is DNS;
- c. extinguish any right of appeal against a connected application, unless that appeal may be made to a person other than the Welsh Ministers;
- d. provide that where an application is both a DNS and urgent Crown development, the application follows the procedure used for determining applications for urgent Crown development;
- e. allow fees to be charged for applications made to the Welsh Ministers (including for any pre-application services provided); and
- f. provide rights of entry for the Welsh Ministers to enter land which is subject to a DNS application or a connected application.

## **PART 5**

### **Development Management**

#### **Section 26: Power of local planning authority to require information with application**

10.84 This section applies section 62(4A) of the TCPA 1990 to Wales. It introduces in Wales limits on local planning authorities' power to require information to accompany planning applications. Information requests must be reasonable and relevant.

#### **Section 27: removal of duties to make provision about design and access statements**

10.85 This section amends section 62 of the TCPA 1990 and section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to remove the requirement for a development order to make provision for a design and access statement to be submitted with applications under those sections.

#### **Section 28: Failure to comply with validation requirement: notice and appeal**

10.86 This section inserts sections 62ZA, 62ZB, 62ZC and 62ZD into the TCPA 1990.

10.87 Section 62ZA requires local planning authorities to serve a notice upon an applicant where they consider that the application submitted to them does not comply with certain information requirements. The notice must identify the requirement in question and set out the authority's reasons for thinking the application does not comply with it. It enables the Welsh Ministers, by development order, to make provisions about the giving of the notice, including the information to be included and how and when it is to be given.

10.88 Section 62ZB provides applicants with a right of appeal to the Welsh Ministers where the local planning authority has served notice under section 62ZA. It sets out the grounds on which the appeal may be made. The Welsh Ministers may, by a development order, prescribe the requirements for submitting the appeal, including how and when the notice of appeal is to be made and the information that is to accompany it. Appeals are to be determined on the basis of written representations.

10.89 Section 62ZC provides that, unless the Welsh Ministers give a direction under section 62ZD, an appointed person determines appeals made to the Welsh Ministers under section 62ZB. (It is anticipated that persons will be appointed from the Planning Inspectorate Wales.) It also sets out the functions of the appointed person. They have the same powers and duties in relation to an appeal as the Welsh Ministers. Section 62ZD allows the Welsh Ministers to recover for decision by them an appeal under section 62ZB that would otherwise be determined by an appointed person.

- 10.90 Section 28 also amends section 79 of the TCPA 1990 to enable the Welsh Ministers to decide when determining an appeal under section 78 whether an information requirement of a local planning authority is reasonable and relevant.

### **Section 29: Revocation of saving of Town and Country Planning (Applications) Regulations 1988**

- 10.91 This section revokes the saving of the Town and Country Planning (Application) Regulations 1988. The effect is that those regulations are now revoked for all purposes.

### **Section 30: Power to decline to determine retrospective applications**

- 10.92 This section amends section 70C of the TCPA 1990. The effect of the amendment is that a local planning authority in Wales may decline to determine a retrospective planning application if an enforcement notice has previously been issued in relation to any part of the development.

### **Section 31: Decision notices**

- 10.93 This section inserts section 71ZA into the TCPA 1990. It enables the Welsh Ministers by development order to specify the form of decision notices, the manner in which they are to be given, and the particulars to be contained in them.
- 10.94 It requires a decision notice to specify any plans or other documents that form part of the planning permission. The planning permission will be deemed to be granted subject to the condition that the development must be carried out in accordance with the plans and documents specified in the decision notice.
- 10.95 The provision requires the local planning authority to issue a revised version of the decision notice where consents are given or conditions changed. The revised version of the decision notice must contain matters specified in a development order.
- 10.96 The provision applies whether planning permission is granted by local planning authorities or the Welsh Ministers.
- 10.97 The provision also applies to planning permission granted under section 90 (development with government authorisation), section 102 (orders requiring discontinuance of use or alteration or removal of buildings or works) and section 141 (action by Secretary of State in relation to purchase notice) all of the TCPA 1990.

## **Section 32: Notification of development**

- 10.98 This section inserts section 71ZB into the TCPA 1990. It places a requirement on developers to notify the local planning authority of the date on which the development is to begin, the details of the planning permission to be implemented and any other matters specified in a development order.
- 10.99 The provision requires a developer to display on or near the development site a notice of the decision to grant planning permission for that development. The notice must be displayed throughout the development period.
- 10.100 It also enables the Welsh Ministers by a development order to specify the categories of planning permission to which the requirement will apply; the form and contents of such notices; and how a copy of the grant of planning permission must be displayed.
- 10.101 It requires, where relevant, decision notices to set out the duties to be undertaken by the developer in relation to giving and displaying notices under the section.
- 10.102 Planning permission will be deemed to be granted subject to the condition that these requirements must be complied with.

## **Section 33: Duration of planning permission: general**

- 10.103 This section makes a number of amendments to section 91 of the TCPA 1990 (General condition limiting duration of planning permission) and inserts new subsections (3ZA), (3ZB), (3ZC) and (3ZD).
- 10.104 Subsections (3ZA) and (3ZB) provide that if planning permission is granted under section 73 of the TCPA 1990 which varies or removes conditions from a previous grant of planning permission, without a time limit condition and the previous planning permission was granted subject to a time limit condition, the section 73 permission is to be granted subject to a deemed time limit condition that the development is started no later than the date on which the previous planning permission required the development to be started. This means that, unless a new period is stated, a new permission under section 73 lasts for the unexpired period of the original permission.
- 10.105 Subsection (3ZC) and (3ZD) defines the term previous planning permission and section 73 permission.

## **Section 34: Duration of outline planning permission**

- 10.106 This section makes a number of amendments to section 92 of the TCPA 1990 (Outline planning permission) and inserts new subsections (3A), (3B), (3C), (3D) and (3E).
- 10.107 Subsections (3A) and (3B) provide that where outline planning permission is granted under section 73 without a condition as to the period within which an

application for approval of reserved matters must be made, the permission will be subject to a deemed condition that approval for reserved matters must be made no later than the previous planning permission required the application to be made. If an application is not made within that period, the permission will lapse.

10.108 Subsections (3C) and (3D) provide that if outline planning permission is granted under section 73 without a condition as to when the development is started, the permission will be subject to a deemed condition that the development is started no later than the previous planning permission required it to be started. If the development is not started within that period, the permission will lapse. This means that, unless a new period is stated, the new permission lasts for the unexpired period of the original permission.

10.109 Subsection (3E) defines a previous planning permission.

### **Section 35: Consultation etc in respect of certain applications relating to planning permission**

10.110 The provision inserts section 100A into the TCPA 1990. It makes provision for consultation in respect of:

- a. applications for approval of reserved matters;
- b. applications for consent, agreement or approval required by any conditions or limitation subject to which planning permission has been granted; and
- c. applications for non-material changes to planning permission.

10.111 It provides that where a local planning authority decides to consult a statutory consultee who was consulted on the original application, they cannot determine that application before the end of the period prescribed in a development order. Those consulted must give a substantive response within that period and report to the Welsh Ministers on their compliance with this duty.

10.112 It also enables Welsh Ministers, by development order, to specify:

- a. the information to be provided by the local planning authority in respect of the consultation,
- b. the requirements of a substantive response; and
- c. the form and contents of the compliance report.

### **Section 36: Stopping up or diversion of public paths where application for planning permission made.**

10.113 This section amends sections 257 and 259 of the TCPA 1990 to enable the process leading to the stopping up or diversion of public paths to start before planning permission has been granted.



## **Section 37: Exercise of functions of local planning authority relating to applications**

- 10.114 Section 37 of the Bill inserts sections 319ZA, 319ZB, 319ZC and 319ZD into the TCPA 1990.
- 10.115 Section 319ZA enables Welsh Ministers to make regulations to require a local planning authority to delegate functions relating to planning applications. The terms of the delegation may be prescribed in the regulations.
- 10.116 Section 319ZB enables Welsh Ministers to make regulations to prescribe the size and make up of any committee or sub-committee to which a planning function is delegated. It disapplies a provision from the Local Government Act 1972 whereby proceedings are not invalid if there is a vacancy in a committee or sub-committee.
- 10.117 This section also prevents a local planning authority from delegating a relevant function to a committee or sub-committee that does not satisfy the procedural requirements.
- 10.118 Section 319ZC supplements sections 319ZA and 319ZB. It provides that sections 101 and 102 of the Local Government Act 1972 are subject to sections 319ZA and 319ZB and any regulations made under those sections. Section 101 allows local authorities to make arrangements for the discharge of their functions by a committee, sub-committee or officer, or by another local authority. Section 102 makes provision about the appointment by local authorities of committees and sub-committees.
- 10.119 This section also accommodates the ability of local planning authorities to exercise functions jointly or where one local planning authority exercises the functions of another local planning authority under section 319ZC(2). If the authorities are subject to different delegation requirements, the authorities must agree between them which authority's delegation requirements apply to exercise of the function.
- 10.120 Section 319ZD provides interpretation for the purposes of the above sections.

## **PART 6**

### **Enforcement, Appeals etc**

#### **Section 38: Breach of planning control: Enforcement warning notice**

- 10.121 This section inserts section 173ZA into the TCPA 1990.
- 10.122 Section 173ZA introduces Enforcement Warning Notices. Local planning authorities will be able to serve an enforcement warning notice where it appears to them that there has been a breach of planning control and there is a reasonable prospect that planning permission would be granted if an application were to be submitted. Copies of the notice will be served on the

owner, occupier and any other person having an interest in the land. Notices will identify the breach of planning control and state that further enforcement action may be taken if a planning application for the breach is not submitted within a specified time. Notices will constitute the taking of enforcement action and will therefore have the effect of providing local planning authorities with a period of 4 years to take further enforcement action in respect of the breach. These notices will indicate to those in breach that applying for retrospective planning permission is likely to lead to planning permission being granted, subject to conditions.

### **Section 39: Appeal against enforcement notice: deemed application for planning permission**

- 10.123 This section amends section 177 of the TCPA 1990 to provide that the Welsh Ministers may only grant planning permission when allowing an enforcement appeal if the appeal was made on the ground in section 172(2)(a) (that planning permission ought to be granted – “ground (a)”) and that only ground (a) appeals result in a deemed application for planning permission.

### **Section 40: Restrictions on right to appeal against planning decisions**

- 10.124 Section 40 amends section 78 of the TCPA 1990 by inserting new subsections (4AA) and (4AB).
- 10.125 The effect is to prevent consecutive appeals in respect of an unauthorised development. Subsection (4AA) prevents an appeal against the refusal of planning permission where a planning permission for the same matter was not granted in an appeal against an enforcement notice. Subsection (4AB) has a similar effect by preventing appeals against the refusal of planning permission subject to conditions, where a condition was not previously discharged in an appeal.

### **Section 41: Restrictions on right to appeal against enforcement notice**

- 10.126 This section amends section 174 of the TCPA 1990. The amendment prevents appeals against enforcement notices on the ground that planning permission ought to be granted, where the enforcement notice is issued after a decision to refuse planning permission for a related development has already been upheld on appeal. Similarly, an enforcement appeal cannot be brought on the grounds that a condition ought to be discharged if a decision to grant planning permission subject to the condition was upheld on a previous appeal.

## **Section 42: No variation of application after service of notice of appeal against planning decision etc.**

- 10.127 This section inserts the following subsections into the relevant Acts:
- Section 78(4BA) into the TCPA 1990;
  - Section 195(1DA) into the TCPA 1990;
  - Section 21(4A) into the Planning (Listed Buildings and Conservation Areas) Act 1990; and
  - Section 21(3E) into the Planning (Hazardous Substances) Act 1990.
- 10.128 The effect of these insertions is that an application may not be varied following service of notice of appeal under various sections of those Acts.

## **Section 43: Appeal against notice in respect of land adversely affecting amenity**

- 10.129 This section amends section 217 of the TCPA 1990 to transfer responsibility for determining appeals against notices served under section 215 (land adversely affecting amenity) from the Magistrates' Courts to the Welsh Ministers. The amendment also allows the Welsh Ministers to make provision for the procedures to make such an appeal and the information to be provided. Non-compliance with a section 215 notice and other offences under section 216 will continue to be dealt with by Magistrates.

## **Section 44: Costs on applications, appeals and references**

- 10.130 This inserts section 322C into the TCPA 1990.
- 10.131 This is a standalone provision for costs to be awarded resulting from an application, appeal or reference to the Welsh Ministers. Subsection (2) enables the Welsh Ministers to direct that their own costs are recovered from the local planning authority or party to an appeal. Subsection (3) allows the Welsh Ministers to recover reasonable administrative costs incurred. Subsection (4) allows the Welsh Ministers to recover costs in respect of an inquiry or hearing that does not take place and costs incurred in reviewing planning obligations. Subsection (5) allows the Welsh Ministers, by regulations, to prescribe a standard daily amount for costs. Costs incurred by the Welsh Ministers are the daily amount for time spent dealing with a case, travelling and subsistence costs, the costs of appointing someone to deal with the case and any legal costs. Subsection (6) enables the Welsh Ministers to make costs orders.

## **Section 45: Procedure for certain proceedings**

- 10.132 This section inserts section 323A into the TCPA 1990.
- 10.133 The new section enables the Welsh Ministers to prescribe, by regulations, the procedure to be followed in connection with appeals, applications or references that are considered by the Welsh Ministers and dealt with in writing, by hearing or inquiry. The regulations may make provision about the

procedure to be followed in connection with matters before or after an inquiry, hearing or the making of written representations. The regulations may prescribe timescales for the submission of documents and representations and the giving of directions. The regulations may prevent new matters being raised at an appeal which could have been raised during the application stage.

#### **Section 46: Costs and procedure on appeals etc.: further amendments**

10.134 Schedule 5 makes consequential, technical amendments.

### **Part 7**

#### **Town and Village Greens**

#### **Section 47: Reduction of period for making certain applications for registration**

10.135 This section amends section 15(3)(c) of the Commons Act 2006 so as to reduce the period within which a town or village green application can be made (after 20 years of recreational use “as of right” has accrued but has in fact ceased) from two years to one year.

#### **Section 48: Statement by owner to end use of land as of right**

10.136 This section makes amendments to section 15A of the Commons Act 2006 so as to apply that section to Wales.

10.137 It enables an owner of land to deposit a statement and map with the commons registration authority, the effect of which is to bring to an end any period during which persons have undertaken sports and pastimes on the land in question “as of right”.

#### **Section 49: Exclusion of right to apply for registration**

10.138 This section makes amendments to section 15C of the Commons Act 2006 so as to apply that section to Wales.

10.139 Section 15C excludes the right of a person to apply for the registration of a town or village green under section 15(1).

10.140 The section introduces a new Schedule 1B into the Commons Act 2006. Schedule 1B makes provision for a number of “trigger events”, the occurrence of which brings to an end a person’s right to apply for the registration of land as a town or village green under section 15(1) of the Commons Act 2006. Each of those trigger events is accompanied by a corresponding “terminating event”, upon which the right under section 15(1) becomes exercisable again.

## **Section 50: Applications to amend registers: power to make provision about fees**

- 10.141 This section amends section 24(2A) of the Commons Act 2006. The effect is to apply section 24(2A) to Wales and allow the Welsh Ministers to set fees for applications to amend the register of common land and town or village greens.

## **Part 8**

### **General Provisions**

#### **Section 51: Regulations and orders made by Welsh Ministers**

- 10.142 Section 51 introduces Schedule 7, which makes a number of amendments to the TCPA 1990 in order to bring together the procedures for making orders and regulations. Similar amendments are made to the PCPA 2004 and the Commons Act 2006.

#### **Section 54: Coming into force**

- 10.143 This section sets out the provisions that will come into effect on the date of Royal Assent; and those that will come into force by Commencement Orders made by the Welsh Ministers. Provisions in Parts 2 to 7 will come into force two months after Royal Assent but only to the extent necessary to enable the Welsh Ministers to exercise the function of making regulations and orders.

### **Schedule 1**

- 10.144 This Schedule inserts Schedule 2A into the PCPA 2004. It provides for the constitutional, financial and administrative arrangements of strategic planning panels. Panels will be bodies corporate.

#### *Part 1 of Schedule 2A*

- 10.145 Paragraph 2 makes provision for the panel's membership. It is to be made up of a number of the local planning authorities' locally elected members and nominated members. The panel is to be made up of two thirds of the local planning authorities' members and one third from the nominated members. The total number of members is to be prescribed in regulations. No member of the panel can be employed by the panel.
- 10.146 Paragraph 3 makes provision for each of the relevant local planning authorities to appoint eligible members. Regulations will specify the number to be appointed from each of the relevant authorities but there will be at least one member from each relevant authority.
- 10.147 Paragraph 4 makes provision for the nominated members to be appointed. The Welsh Ministers are to publish lists (which can be amended) of bodies which may be divided into categories and from which the panel can choose to seek nominations. Regulations will be able to specify the category and

number of nominations from the list. The panel has to accept the person nominated by the body that the panel has chosen. If the list is amended and a nominated member is from a body which is no longer included in the list, the member will no longer be eligible to sit on the panel.

- 10.148 Paragraph 5 makes provision for Welsh Ministers to publish (and amend) standard terms of appointment for the panel and for the Welsh Ministers to be notified of each member appointed to the panel.
- 10.149 Paragraph 6 specifies the form of allowances the panel's members may receive. They can only be reimbursed for any expenses incurred for carrying out the work in relation to the work the panel must do to produce and keep under review the Strategic Development Plan and any incidental work such as making representations on Local Development Plans in their area. The Independent Remuneration Panel for Wales currently sets the range and levels of payments and allowances payable to local authority members and members of other bodies in accordance with Part 8 of the Local Government (Wales) Measure 2011.
- 10.150 Paragraph 7 provides that panel members can resign and the panel can terminate the membership of individual members. This paragraph also sets out the grounds on which a member may be removed from the panel. If the panel decides to terminate someone's membership the panel must give the reasons for the decision to the member. The panel must notify the relevant local planning authority if a local planning authority member is removed.
- 10.151 Paragraph 8 provides for relevant local planning authorities to be able to remove their members from the panel. If the local planning authority decides to remove the member from the panel it must notify the panel and the Welsh Ministers and the reasons for the decision. It also makes provisions for members who are re-elected to be able to remain on the panel.
- 10.152 Paragraph 9 provides that the panel must annually appoint a chair and a deputy chair from amongst the local planning authority members of a panel. The same member can be chair or deputy chair for more than one year if re-appointed. If the local planning authority member is no longer a member of the panel, that member ceases to be the chair or deputy chair.

#### *Part 2 of Schedule 2A*

- 10.153 Paragraph 10 provides the panel with the ability to employ staff and determine their terms and conditions.
- 10.154 Paragraph 11 provides that the panel is able to delegate certain functions. The panel cannot delegate its statutory responsibility for deciding whether a Strategic Development Plan is ready for independent examination or adoption of the plan. Neither can it delegate the function of appointing members to the panel. The panel can delegate functions to a committee of the panel or a member of the panel or the panel's staff. However any function that has been

delegated can still be carried out by the panel. The panel remains responsible for any function it has delegated.

- 10.155 Paragraph 12 provides that the panel is to make and publish standing orders, which can be revised. The standing orders are to set out the procedures by which the panel will operate and are to make provision for when seats on the panel are vacant so that the panel can continue to operate in spite of a vacancy in its membership. The standing orders must contain provision which requires a majority of local planning authority members to be present for proceedings to be voted upon at meetings.
- 10.156 Paragraph 13 provides that meetings should be open to the public. If any meetings are not open to the public the standing orders must explain under what circumstances the public is to be excluded. The time, date, location and agenda are to be advertised before any meeting. All the information considered by the panel including the minutes of their meetings will also be available unless they relate to meetings which exclude the public.

### *Part 3 of Schedule 2A*

- 10.157 Paragraph 14 provides that the local planning authorities within the Strategic Development Plan area are to be responsible for financing the panel. The description of qualifying expenditure for which the relevant local planning authorities are responsible will be set out in regulations.
- 10.158 Paragraph 15 provides for the process of how the proportion for each local planning authority will be determined by the panel and when these decisions should be made. The panel will be responsible for drafting the proposals and consulting on them with the relevant local planning authorities and the Welsh Ministers. The panel may revise its proposal within a financial year and if it does, it will also need to consult the relevant local planning authorities and the Welsh Ministers. If the local planning authorities have agreed an apportionment then the panel's determination must reflect the agreed apportionment.
- 10.159 Paragraph 16 provides that the panel must manage its work effectively by preparing and publishing its work programme, including a description of the activities that the panel intends to undertake. The panel will need to forecast its expenditure in relation to the carrying out its functions and the qualifying expenditure. The panel must have a draft and publish the work by certain dates within the financial year. The draft must be considered by each relevant local planning authority and the Welsh Ministers and the panel must consider those responses. The same process must be followed for a revision of the programme. The panel may revise its work programme and if it does, it will need to consult the local planning authority and the Welsh Ministers.
- 10.160 Paragraph 17 provides that for each year other than its first financial year, a panel must give advance notice to the constituent local planning authorities of the amounts that each authority is to contribute for the forthcoming financial year and each authority must pay the amount. It also makes provision for the

revision of the apportionments of qualifying expenditure and revision of the estimated qualifying expenditure in the work programme. If the revised amount is greater than the amount already paid to the panel the local planning authority must pay the difference by the end of the month following the notice to the authority of the new amount. If the revised amount is less than the amount already paid to the panel, the panel must pay back the difference to the local planning authority.

- 10.161 Paragraph 18 provides that the panel may receive grant funding or borrow money or receive other payments from the Welsh Ministers. The panel cannot borrow money from any other person. Any payments may be subject to conditions.
- 10.162 Paragraph 19 provides that the panel must keep accounts. The form and content of statements of accounts must comply with any direction given by the Welsh Ministers. These statements must be prepared by 30<sup>th</sup> November following the end of each financial year. The panel must submit statements to the Auditor General for Wales, the relevant local planning authorities and the Welsh Ministers. The Auditor General for Wales must check the content of statements and forward its reports to the local planning authorities and the Welsh Ministers within 4 months of statements being submitted.
- 10.163 Paragraph 20 provides that the panel is to prepare an annual report which will detail the work that it has carried out over the financial year. This is to be published at the same time as the statement of accounts. The local planning authorities and the Welsh Ministers must receive a copy of the report.
- 10.164 Paragraph 21 defines the financial year for the panel and makes provision in relation to the first financial year of the panel.

#### *Part 4 of Schedule 2A*

- 10.165 Paragraph 22 provides that the panel and any local planning authority must have regard to guidance issued by the Welsh Ministers.
- 10.166 Paragraph 23 provides powers for the Welsh Ministers to direct a panel or a constituent local authority to take the steps that they consider appropriate where they think that a panel or an authority is failing to do anything that it is required to do in relation to “relevant requirements”. Relevant requirements are the appointment of members of a panel, the appointment of chair and deputy chair, making standing orders and arrangements relating to qualifying expenditure of a panel. The Welsh Ministers are given the power to do anything in place of the panel to comply with any relevant requirements and may charge the panel for any work carried out on its behalf.
- 10.167 Paragraph 24 provides that regulations may enable the Welsh Ministers to issue a direction requiring a constituent planning authority to provide a panel with staff and other services to enable the panel to carry out functions in its first financial year and to specify the terms of the services to be provided if the panel and an authority cannot agree. It also allows regulations made under



section 60D of the PCPA 2004 to provide for the transfer of property, rights and liabilities.

- 10.168 Paragraph 25 provides the interpretation of terms used in the Schedule.
- 10.169 Paragraph 26 enables the Welsh Ministers to change the Schedule through regulations.
- 10.170 Part 2 of Schedule 1 makes consequential amendments to other Acts and Measures.
- 10.171 Section 1 of the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) is amended to include a Strategic Planning Panel in the list of bodies, This means that a local authority and a Strategic Planning Panel may enter into an agreement about the supply of goods and services by a local authority to a panel.
- 10.172 Section 80 of the Local Government Act 1972 (disqualifications for election and holding office as member of local authority) is amended so that an employee of a Strategic Planning Panel is disqualified from being elected or being a member of a local authority which is a constituent local planning authority in relation to that panel.
- 10.173 Section 83 of the Local Government Act 2000 (conduct of members and employees of local authorities in Wales: interpretation) is amended so that if a person is suspended for misconduct under Part 2 of the that Act from being a member of a constituent authority, that person is also suspended from being a member of a Strategic Planning Panel.
- 10.174 Part 2 of Schedule 1 to the Freedom of Information Act 2000 (public authorities: local government) is amended to include a Strategic Planning Panel so that there will be a general right of access to information held by a panel in accordance with the Freedom of Information Act 2000.
- 10.175 Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (investigation of complaints etc: listed authorities) is amended to include a Strategic Planning Panel as a body falling within the remit of the public services ombudsman for Wales.
- 10.176 Part 2 of Schedule 19 to the Equality Act 2010 is amended to include a Strategic Planning Panel as a body which is subject to the public sector equality duty under the Act.
- 10.177 Schedule 6 to the Welsh Language (Wales) Measure 2011 is amended to include a Strategic Planning Panel as a body liable to be required to comply with service delivery standards, policy making standards, operational standards, promotion standards and record keeping standards in accordance with the Act.

- 10.178 Section 144 of the Local Government (Wales) Measure 2011 is amended to include a Strategic Planning Panel as a body in respect of whose members the Independent Remuneration Panel for Wales may set expenses.

## **Schedule 2**

- 10.179 This Schedule makes consequential amendments to other Acts to the general effect that a Strategic Planning Panel is to be consulted or notified in relation to the exercise of certain functions under the Acts specified in the Schedule. This schedule also makes consequential amendments to other Acts in relation to the National Development Framework, strategic planning panels and Strategic Development Plans.

## **Schedule 3**

- 10.180 This schedule inserts Schedule 4D into the TCPA 1990.
- 10.181 Schedule 4D provides that certain functions in relation to an application for planning permission for Developments of National Significance are to be exercised by a person appointed for that purpose by the Welsh Ministers. Where such a person is so appointed, their decision is to be treated as being the decision of the Welsh Ministers. The Welsh Ministers may revoke that appointment and may either appoint another person to carry out those functions or carry out those functions themselves.

## **Schedule 4**

- 10.182 This Schedule makes a number of consequential amendments to the TCPA 1990. The main amendments are described below.
- 10.183 Paragraph 7 inserts section 75A into the TCPA 1990. This provides for applications for planning permission for Developments of National Significance to be subject to the same procedural provisions (set out in a development order) as those which apply to applications made to a local planning authority.
- 10.184 Paragraphs 8 and 9 amend the TCPA 1990 to provide that neither a simplified planning zone nor an enterprise scheme has the effect of granting planning permission for development of national significance.
- 10.185 Schedule 4 also inserts subsections (1B) and (1C) into section 303 of the TCPA 1990 to allow the Welsh Ministers to make regulations for fees to be charged for the performance of any function the Welsh Ministers have in respect of an application made to them under sections 62D, 62L or 62M.

## **Schedule 5**

- 10.186 Schedule 5 makes a number of consequential amendments to Acts in relation to the costs and procedures on appeal. The amendments are required because of the changes made by Part 6.

## **Schedule 6**

- 10.187 Schedule 6 sets out Schedule 1B which section 50(3) inserts into the Commons Act 2006. Schedule 1B sets out “trigger events” and “terminating events” for the purposes of section 15 of that Act.

## **Schedule 7**

- 10.188 Schedule 7 makes a number of amendments to the PCPA 2004 and the TCPA 1990. The amendments relate to the powers of the Welsh Ministers to make development orders and regulations under those Acts. They bring the relevant provisions in each Act together.
- 10.189 In relation to the PCPA 2004, paragraph 1 provides that the approval of the Assembly will be required before regulations or orders amending primary legislation can be made by the Welsh Ministers. In all other cases, regulations and orders can be made by the Welsh Ministers without Assembly approval. The Assembly will have power to annul any regulations or orders so made.
- 10.190 In relation to the TCPA 1990, paragraph 3 makes similar provision in relation to regulations. Paragraph 3 amends section 333 to provide that certain regulations cannot be made without Assembly approval, these are listed in new subsection (3F). All others can be made by the Welsh Ministers without Assembly approval but can be annulled by the Assembly.
- 10.191 Paragraph 5 makes similar provision in relation to orders made under the TCPA 1990. Most development orders can be made without Assembly approval but can be annulled by the Assembly. The only order which requires Assembly approval before it is made is an order under section 293(1)(c). An order under section 293(1)(c) allows the Welsh Ministers to specify “Crown interests” for the purposes of Part 13 of that Act.
- 10.192 Paragraph 8 makes similar provision in relation to orders and regulations under the Commons Act 2006. New subsection 59(5) sets out those regulations and orders which require Assembly approval before they can be made. All others can be made by the Welsh Ministers without Assembly approval but can be annulled by the Assembly.
- 10.193 The Schedule makes further amendments required as a result of those changes.

## 11 Table of Derivations

11.1 Table of Derivations are included in the following section.

11.2 The table below is intended to provide information on the derivation of the provisions of the Planning (Wales) Bill. The table does not provide definitive or exhaustive guidance and should be read in conjunction with the Bill and with the explanatory notes on the Bill.

### ABBREVIATIONS:

<b>CA:</b>	<b>Commons Act 2006</b>
<b>HSA:</b>	<b>Planning (Hazardous Substances) Act 1990</b>
<b>LBA:</b>	<b>Planning (Listed Buildings and Conservation Areas) Act 1990</b>
<b>PCPA:</b>	<b>Planning and Compulsory Purchase Act 2004</b>
<b>TCPA:</b>	<b>Town and Country Planning Act 1990</b>

TABLE OF DERIVATIONS		
SECTION / PARAGRAPH	CORRESPONDING REFERENCE IN EXISTING LEGISLATION	SUBSTANTIVE CHANGE?
PART 2 : DEVELOPMENT PLANNING		
<b>2</b>	<b>Section 60 PCPA</b>	<b>Yes</b>
<b>3</b>	<b>New</b>	
<b>4</b>	<b>New</b>	
<b>5</b>	<b>New</b>	
<b>6</b>	<b>Section 62 PCPA and 83 TCPA</b>	<b>Yes</b>
<b>7(1)</b>	<b>New</b>	
<b>7(2)</b>	<b>Section 69 PCPA</b>	
<b>8</b>	<b>Section 38 PCPA</b>	<b>Yes</b>
<b>9(1) to (6)</b>	<b>Schedule 13 to TCPA</b>	<b>Yes</b>
<b>9(7)</b>	<b>New</b>	
<b>9(8)</b>	<b>Section 170 TCPA</b>	
<b>10</b>	<b>Section 62 PCPA</b>	<b>Yes</b>
<b>11</b>	<b>Section 66 PCPA</b>	<b>Yes</b>
<b>12</b>	<b>Section 72 PCPA</b>	<b>Yes</b>
<b>13</b>	<b>Sections 78 and 62 PCPA</b>	
<b>14</b>	<b>Introduces Schedule 2</b>	
PART 3 PRE-APPLICATION PROCEDURE		
<b>15(2)</b>	<b>New</b>	

<b>15(3) to (5)</b>	<b>Sections 62 and 61W TCPA</b>	<b>Yes</b>
<b>16</b>	<b>New</b>	
<b>PART 4 APPLICATIONS TO THE WELSH MINISTERS</b>		
<b>17</b>	<b>New</b>	
<b>18</b>	<b>New</b>	
<b>19</b>	<b>New</b>	
<b>20</b>	<b>New</b>	
<b>21</b>	<b>New</b>	
<b>22</b>	<b>New</b>	
<b>23</b>	<b>New</b>	
<b>24(1)</b>	<b>New</b>	
<b>24(2)</b>	<b>Introduces Schedule 3</b>	
<b>25</b>	<b>Introduces Schedule 4</b>	
<b>PART 5 DEVELOPMENT MANAGEMENT</b>		
<b>26</b>	<b>Section 62(4A) TCPA</b>	<b>Yes</b>
<b>27</b>	<b>Section 62 TCPA Section 10 LBA</b>	<b>Yes</b>
<b>28 (1) to (2)</b>	<b>New</b>	
<b>28 (3)</b>	<b>Section 79 TCPA</b>	<b>Yes</b>
<b>29</b>	<b>New</b>	
<b>30</b>	<b>Section 70C TCPA</b>	<b>Yes</b>
<b>31(2)</b>	<b>New</b>	
<b>31(3) to (4)</b>	<b>Sections 90 and 102 TCPA</b>	
<b>32</b>	<b>New</b>	
<b>33</b>	<b>Sections 91, 73 TCPA and 51(1) PCPA</b>	<b>Yes</b>
<b>34</b>	<b>Sections 92 TCPA and 51(2) PCPA</b>	<b>Yes</b>
<b>35</b>	<b>New</b>	
<b>36</b>	<b>Sections 257 and 259 TCPA</b>	<b>Yes</b>
<b>37(1)</b>	<b>New</b>	
<b>37(2)</b>	<b>Section 316 TCPA 1990</b>	
<b>37(3)</b>	<b>Section 89 LBA</b>	
<b>37(4)</b>	<b>Section 37 HSA</b>	
<b>37(5)</b>	<b>Sections 13 and 20 of the Local Government and Housing Act 1989</b>	
<b>PART 6 ENFORCEMENT</b>		
<b>38(2)</b>	<b>New</b>	
<b>38(3) to (4)</b>	<b>Sections 171A and 188 TCPA</b>	

<b>39</b>	<b>Section 177 TCPA</b>	
<b>40</b>	<b>Section 78 TCPA</b>	<b>Yes</b>
<b>41</b>	<b>Section 174 TCPA</b>	<b>Yes</b>
<b>42</b>	<b>Sections 78, 195 TCPA, section 21 LBA and section 21 HSA</b>	<b>Yes</b>
<b>43</b>	<b>Sections 217, 218 and 289 TCPA</b>	<b>Yes</b>
<b>44</b>	<b>New</b>	
<b>45</b>	<b>New</b>	
<b>46</b>	<b>Introduces Schedule 5</b>	
<b>PART 7 TOWN AND VILLAGE GREENS</b>		
<b>47</b>	<b>Sections 15 CA and 14 Growth and Infrastructure Act 2013</b>	<b>Yes</b>
<b>48</b>	<b>Section 15A CA</b>	<b>Yes</b>
<b>49(1) to (2)</b>	<b>Section 15C CA</b>	<b>Yes</b>
<b>49(3)</b>	<b>Introduces Schedule 6</b>	
<b>50</b>	<b>Section 24 CA</b>	<b>Yes</b>
<b>PART 8 GENERAL PROVISIONS</b>		
<b>51</b>	<b>Introduces Schedule 7</b>	
<b>52</b>	<b>New</b>	
<b>53</b>	<b>New</b>	
<b>54</b>	<b>New</b>	
<b>55</b>	<b>New</b>	
<b>SCHEDULE 1</b>		
<b>1</b>	<b>New</b>	
<b>2</b>	<b>Section 1 of Local Authorities (Goods and Services) Act 1970</b>	
<b>3</b>	<b>Section 80 Local Government Act 1972</b>	
<b>4</b>	<b>Section 83 Local Government Act 2000</b>	
<b>5</b>	<b>Part 2, Schedule 1 Freedom of Information Act 2000</b>	
<b>6</b>	<b>Schedule 3, Public Services Ombudsman (Wales) Act 2005</b>	
<b>7</b>	<b>Schedule 19 Equality Act 2010</b>	
<b>8</b>	<b>Schedule 6 Welsh Language (Wales) Measure 2011</b>	
<b>9</b>	<b>Local Government (Wales) Measure 2011</b>	
<b>SCHEDULE 2</b>		
<b>1 to 4</b>	<b>Sections 21A, 21C and Schedule 4 to Welsh Development Agency Act 1975</b>	

<b>5 to 7</b>	<b>Sections 27AA and 37A Wildlife and Countryside Act 1981</b>	
<b>8 to 15</b>	<b>Sections 293A, 303A, 306, 324, 336, Schedule 4A and Schedule 13 TCPA</b>	
<b>16</b>	<b>Schedule 6 Water Resources Act 1991</b>	
<b>17 to 19</b>	<b>Sections 39 and 41 of the Coal Industry Act 1941</b>	
<b>20</b>	<b>Section 66 Environment Act 1995</b>	
<b>21</b>	<b>Section 85 of the Countryside and Rights of Way Act 2000</b>	
<b>22</b>	<b>Section 66 of the Finance Act 2003</b>	
<b>23 to 28</b>	<b>Sections 19, 39, 62, 74, 113 PCPA</b>	
<b>29</b>	<b>Section 40 of the Natural Environment and Rural Communities Act 2006</b>	
<b>30</b>	<b>Schedule 10 Government of Wales Act 2006</b>	
<b>31 to 33</b>	<b>Sections 1 and 2 Planning and Energy Act 2008</b>	
<b>34 to 37</b>	<b>Schedule 6 to the Marine and Coastal Access Act 2009</b>	
<b>SCHEDULE 3</b>		
<b>1</b>	<b>New</b>	
<b>2</b>	<b>Section 59 PCPA</b>	
<b>SCHEDULE 4</b>		
<b>1 to 6</b>	<b>Sections 58, 59, 62A, 70 and 70A TCPA</b>	
<b>7</b>	<b>New</b>	
<b>8 to 22</b>	<b>Sections 87, 88, 92, 93, 99, 253, 257, 284, 288, 293A, 303, 316, 324, Schedule 1A and Schedule 16 to the TCPA</b>	
<b>SCHEDULE 5</b>		
<b>2 to 3</b>	<b>Section 121 and Schedule 6 to Highways Act 1980</b>	
<b>4 to 6</b>	<b>Section 27AA and Schedule 15 to Wildlife and Countryside Act 1981</b>	
<b>7 to 17</b>	<b>Sections 175, 196, 208, 320, 322, 322A, 323 and Schedules 6, 7 and 8 to the TCPA</b>	
<b>18 to 21</b>	<b>Sections 41 and 89 and Schedule 3 to the LBA</b>	
<b>22 to 25</b>	<b>Sections 25, 37 and the Schedule to the HSA</b>	
<b>26</b>	<b>Section 16 of the Tribunals and Inquiries Act 1992</b>	
<b>SCHEDULE 6</b>		
	<b>New Schedule 1B to CA</b>	

SCHEDULE 7		
<b>1</b>	<b>Section 122 PCPA</b>	
<b>2</b>	<b>Schedule 11 to Government of Wales Act 2006</b>	
<b>3</b>	<b>Section 333 TCPA</b>	
<b>4</b>	<b>Sections 116, 202A, 208, 303, 303ZA and 321B TCPA</b>	
<b>5</b>	<b>Section 59 TCPA</b>	
<b>6</b>	<b>Section 333 TCPA</b>	
<b>7</b>	<b>Sections 78, 195 and 293 TCPA</b>	
<b>8</b>	<b>Section 59 CA</b>	
<b>9</b>	<b>Section 61(1) CA</b>	



## Annex A - Cumulative Costs table

### Cumulative Costs of Planning (Wales) Bill

- 1.1 This section outlines a summary of the cumulative costs of the provisions within the Planning (Wales) Bill. This must be read in conjunction with the relevant sections within the main RIA to provide the context and associated details for the figures.
- 1.2 The figures used are a mid point when calculated from a range within the RIA.
- 1.3 This sets out the annual costs over 5 years across Wales per provision where appropriate and a total net cost per group/ stakeholder. It then outlines the costs that cannot be set out annually as they are one off costs or are costs that are only incurred by an action such as the Welsh Ministers using a direction power etc. The annex then sets out the guidance costs associated with these provisions for Welsh Government.

### Annual Costs

#### National Development Framework (Paragraphs 7.7-7.26)

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	100,238	187,238	30,222	30,222	87,095
Additional cost	17,975	17,975	17,975	17,975	17,975

#### Strategic Development Plan\_- *South East Wales illustrative example* (Paragraphs 7.27-7.76)

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	-	-	-	-	-
Additional cost	53,373	171,373	53,373	53,373	53,373
Local planning Authority cost	-	-	700,000	700,000	700,000

- 1.4 From the adoption of an SDP anticipated (2020-21) the estimated annual cost savings for LPAs is £524,000.

**Pre-application community consultation  
(Paragraphs 7.184-7.229)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Development Industry	-	367,000	367,000	367,000	367,000
Additional cost		367,000	367,000	367,000	367,000

**Developments of National Significance  
(Paragraphs 7.291-7.367)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Welsh Government	8,210	81,420	81,420	81,420	81,420
Additional cost		73,210	73,210	73,210	73,210
Local planning Authority	1,000	1,000	1,000	1,000	1,000
Additional cost	-	-	-	-	-
Development Industry	635,300	801,893	801,893	801,893	801,893
Additional cost		166,593	166,593	166,593	166,593

**Statutory consultees – Pre-application Consultation  
(Paragraphs 7.452-7.490)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Development Industry		37,500	37,500	37,500	37,500
Additional cost		37,500	37,500	37,500	37,500
Statutory consultees		1,050	1,050	1,050	1,050
Additional Cost		1,050	1,050	1,050	1,050

**Non validation appeals  
(Paragraphs 7.534-7.582)**

	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Welsh Government	-	50,400	50,400	50,400	50,400
Additional cost	-	50,400	50,400	50,400	50,400
Local planning Authority	114,100	24,500	24,500	24,500	24,500
Savings	-	89,600	89,600	89,600	89,600
Development Industry	805,750	300,300	300,300	300,300	300,300
Savings		505,450	505,450	505,450	505,450

**Decision Notices  
(Paragraphs 7.583-7.637)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Local planning Authority	304,700	44,900	44,900	44,900	44,900
Additional saving	-	265,600	265,600	265,600	265,600
Development Industry	£750,000	0	0	0	0
Savings		750,000	753,300	753,300	753,300

**Notification of Development  
(Paragraphs 7.690-7.727)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Local planning Authority	18,350	4,307	4,307	4,307	4,307
Savings	-	14,043	14,043	14,043	14,043
Development Industry	-	15,000	15,000	15,000	15,000
Additional cost		15,000	15,000	15,000	15,000

**Power to decline to determine retrospective planning applications where an enforcement notice has been served.  
(Paragraphs 7.832-7.856)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	3,577	2,875	2,875	2,875	2,875
Savings		2,875	2,875	2,875	2,875
Local planning Authority	42,716	11,067	11,067	11,067	11,067
Savings	-	31,649	31,649	31,649	31,649

**Enforcement Warning Notice  
(Paragraphs 7.930-7.966)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	-	-	-	-	-
Additional cost	-	-	-	-	-
Local planning Authority	27,587	33,788	33,788	33,788	33,788
Additional Cost	-	6,201	6,201	6,201	6,201

**One avenue to have planning permission granted through appeal  
(Paragraphs 7.857-7.893)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	26,488	10,472	10,472	10,472	10,472
Savings	-	10,472	10,472	10,472	10,472
Local planning Authority	5,005	917	917	917	917
Additional cost	-	4,088	4,088	4,088	4,088
Development Industry	44,110	22,325	22,325	22,325	22,325
Savings	-	21,785	21,785	21,785	21,785

**Appeals against notices in respect of land adversely affecting amenity  
(Paragraphs 7.896-7.929)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	-	895	895	895	895
Additional cost	-	895	895	895	895
Local planning Authority	745	745	745	745	745
Saving	-	420	420	420	420-
Magistrates Court	1,000	-	-	-	-
Savings	-	1,000	1,000	1,000	1,000

**Appeals apply the costs regime to the written representations procedure  
(Paragraphs 7.969-7.1004)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	-	27,000	27,000	27,000	27,000
Additional cost		27,000	27,000	27,000	27,000
Local planning Authority	-	-	-	-	-
Additional cost	-	3,840	3,840	3,840	3,840
Development Industry	-	-	-	-	-
Saving	-	3,840	3,840	3,840	3,840

**Appeals amendments to the costs regime  
(Paragraphs 7.1005-7.1061)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	44,000	-43,000	-43,000	-43,000	-43,000
Savings	-	87,000	87,000	87,000	87,000
Local planning Authority	173,000	254,000	254,000	254,000	254,000
Cost	-	81,000	81,000	81,000	81,000
Development Industry	-173,000	-129,000	-129,000	-129,000	-129,000
Cost	-	44,000	44,000	44,000	44,000

**Appeals no new matters to be raised during the appeal process unless in circumstances prescribed in secondary legislation  
(Paragraphs 7.1062-7.1106)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	26,700	2,700	2,700	2,700	2,700
Savings		24,000	24,000	24,000	24,000

**Appeals no variations can be made to the proposed scheme after the notice of appeal has been made  
(Paragraphs 7.1107-7.1147)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Welsh Government	27,000	-	-	-	-
Savings		27,000	27,000	27,000	27,000

**Town and village greens  
(Paragraphs 7.1150-7.1222)**

	2015-16	2016-17	2017-18	2018-19	2019-20
Development Industry	369,000	221,300	221,300	221,300	221,300
Savings	-	147,700	147,700	147,700	147,700
Commons Registration Authority	64,800	38,900	38,900	38,900	38,900
Savings	-	25,900	25,900	25,900	25,900

## Total additional costs and savings

	2015-16	2016-17	2017-18	2018-19	2019-20	Total
<b>Welsh Government</b>						
Additional cost	89,813	363,318	190,468	190,468	190,468	<b>1,024,535</b>
Savings	-	151,348	151,348	151,348	151,348	<b>605,392</b>
<b>Net</b>	<b>89,813</b>	<b>211,970</b>	<b>39,120</b>	<b>39,120</b>	<b>39,120</b>	<b>419,143</b>
<b>Local Planning Authorities</b>						
Additional cost	-	95,129	795,129	795,129	795,129	<b>2,480,516</b>
Savings	-	401,312	401,312	401,312	401,312	<b>1,605,248</b>
<b>Net</b>	<b>-</b>	<b>306,183</b>	<b>393,817</b>	<b>393,817</b>	<b>393,817</b>	<b>1,487,214</b>
<b>Development Industry</b>						
Additional cost	-	630,093	630,093	630,093	630,093	<b>2,520,372</b>
Savings	-	1,432,075	1,432,075	1,432,075	1,432,075	<b>5,728,300</b>
<b>Net</b>	<b>-</b>	<b>-801,982</b>	<b>-801,982</b>	<b>-801,982</b>	<b>-801,982</b>	<b>-3,207,928</b>
<b>Other Stakeholders</b>						
Additional cost	-	1050	1050	1050	1050	<b>4200</b>
Savings	-	26900	26900	26900	26900	<b>107600</b>
<b>Net</b>	<b>-</b>	<b>25850</b>	<b>25850</b>	<b>25850</b>	<b>25850</b>	<b>-103400</b>

## **One off Costs**

### **Local Development Plan Withdrawal per case (Paragraphs 7.103-7.136)**

<b>Per case</b>	
Welsh Government	2,000
Local planning Authority	25
Local planning Authority savings	1,700,000

### **Joint Local Development Plans per case (2 LPAs) (Paragraphs 7.137-7.159)**

<b>Per case</b>	
Welsh Government	2,000
Local planning Authority savings	850,000
Statutory Consultees	214,250
Statutory Consultees Saving	107,125

### **Joint Planning Boards per case (2 LPAs) (Paragraphs 7.160-7.182)**

<b>Per case</b>	
Welsh Government	2,000
Local planning Authority savings	850,000
Statutory Consultees	214,250
Statutory Consultees Saving	107,125

Transitional set up costs 5% annual budget (One off)

**Pre application service and fees (illustrative cost per inquiry for a major application of 20 units)  
(Paragraphs 7.230-7.289)**

Per inquiry	
Development Industry	522
Saving	522

**Optional Direct Applications  
(Paragraphs 7.368-7.450)**

Per designation	
Welsh Government	96,380
Additional Costs	87,995
Local planning Authority	199,455
Additional Costs	21,775
Development Industry	9,395,126
Saving	2,460

\* This is based on the ‘average local planning authority’

\*\* There are one-off costs associated with introducing this measure, of £17,214

**Decision Notices – Minor Material Amendments  
(Paragraphs 7.638-7.689)**

- 1.5 The provisions for decision notices would see all planning permissions granted subject to a condition that the development is carried out in accordance with the approved plans and documents. As a consequence of this provision all stakeholders will be able to utilise the provisions of Section 73 of the TCPA 1990 to make amendments to an existing permission.
- 1.6 The impact of this consequence is dependent on the current approach adopted by LPAs. Some currently take a more formal approach to amendments and require applications to be resubmitted, some take an informal approach and determine amendments by the exchange of letter, whereas some already make provision for applications under section 73 of the TCPA 1990.



## Development Industry

- 1.7 The potential savings to the development industry are dependent on the current approach taken by the LPA. If all LPAs took a formal approach and require applications to be resubmitted, the industry could potentially save £1,158,700.

## Local Planning Authorities

- 1.8 Should LPAs currently attach conditions that allow minor material amendments to be made through Section 73 there will be no financial impact, whereas should they deal with these applications informally they will increase revenue by £91,300. If all LPAs took a more formal approach and required applications to be resubmitted, LPAs could potentially lose £1,158,700 in planning fees. However, the application fee that accompanies a resubmission is disproportionate to the work undertaken and this work is reflected by the fee that accompanies a Section 73 application.

## **Planning Committees (Paragraphs 7.738-7.784)**

- 1.9 The only costs and savings identified in the Regulatory Impact Assessment are attributed to local planning authorities. They are based upon a sample of three authorities identified to represent the current range of committee sizes operating in Wales.
- 1.10 In summary, the existing average cost of a committee is identified to be £2,969 per meeting.
- 1.11 In applying the proposed change, which is to define in subordinate legislation the size of planning committees to a minimum of 11 and a maximum of 21 members, a potential saving could be achieved:
- The minimum average saving achieved by the sample authorities (when changing their committee size to 11 members) is identified to be £1,570 per meeting.
  - The maximum average saving achieved by the sample authorities (when changing their committee size to 21 members) is identified to be £1,032 per meeting.
- 1.12 The savings referred to above are not tangible monetary savings to the local planning authority, but are savings in respect of Member and officer / staff time and resource of which can be utilised for other purposes and responsibilities. This is because the average cost of a planning committee is predominately made up of Member and officer / staff costs, which is a fixed annual cost to the local planning authority.

## **Guidance Costs**

- 1.13 The provisions within the Planning (Wales) Bill will require associated guidance. This is anticipated to cost around £150,000 and includes production, publication and dissemination of the guidance. This is a cost that will be met by Welsh Government.