

# **PLANNING (WALES) ACT 2015**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Planning (Wales) Act 2015 which was passed by the National Assembly for Wales on 19 May 2015 and received Royal Assent on 6 July 2015. They have been prepared by the Planning Directorate of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. The planning system in Wales 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. The Welsh Government establishes the overall context for the operation of the planning system through making subordinate legislation and setting the policy framework through Planning Policy Wales, technical advice notes, circulars and guidance. Day to day operation of the planning system is vested in local planning authorities who have responsibility for making their local development plan, making decisions on planning applications and taking enforcement action where there are breaches of planning control.
4. The main pieces of primary legislation as they relate to planning in Wales are the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004. In these Explanatory Notes the Town and Country Planning Act 1990 is referred to as the TCPA 1990 and the Planning and Compulsory Purchase Act 2004 is referred to as the PCPA 2004. The Planning (Wales) Act 2015 makes changes to the planning system in Wales largely by amending these two Acts.
5. Part 3 of the TCPA 1990 deals with development management. Part 6 of the PCPA 2004 deals with development plans in Wales.
6. An extensive evidence base was assembled to identify areas where the planning system in Wales should be reformed. Key reports include:
  - a) Independent Advisory Group Report – Towards a Welsh Planning Act: Ensuring the Planning System Delivers (June 2012);
  - b) Delivery of Planning Services in Statutory Designated Landscapes in Wales (August 2012);
  - c) A New Approach to Managing Development in Wales: Towards a Welsh Planning Act (September 2012);

*These notes refer to the Planning (Wales) Act 2015 (anaw 4)  
which received Royal Assent on 6 July 2015*

- d) Public Attitudes Towards the Planning System in Wales (September 2012);
  - e) Evaluation of Consenting Performance of Renewable Energy Schemes (January 2013);
  - f) Research into the Review of the Planning Enforcement System in Wales (June 2013);
  - g) Research into the operation of Planning Committees in Wales (July 2013);
  - h) Review of Design and Access Statements in Wales (November 2013);
  - i) Research to Evaluate the Planning Permission Process for Housing (January 2014).
7. The Welsh Government published “Positive Planning: Proposals to Reform the Planning System in Wales” in December 2013.
8. In addition the National Assembly for Wales Environment and Sustainability Committee published:
- a) an Inquiry into Planning in Wales (January 2011);
  - b) an Inquiry into Energy Policy and Planning in Wales (June 2012); and
  - c) Evaluation of Consenting Performance of Renewable Energy Schemes in Wales (January 2013)

## **COMMENTARY ON SECTIONS**

### **Part 1 Introduction**

#### **Section 1 – Overview of this Act**

9. Section 1 gives an overview of the Act and describes each Part.

### **Part 2 Sustainable Development**

#### **Section 2 – Sustainable Development**

10. This section applies to public bodies carrying out functions in relation to development plans under Part 6 of the PCPA 2004 or applications for planning permission under Part 3 of the TCPA 1990. This section confirms that public bodies must exercise their functions relating to development plans and applications for planning permission as part of carrying out sustainable development, so that the development and use of land contribute to improving the well-being of Wales.
11. The term “public bodies” has the same meaning in this section as in the Well-being of Future Generations (Wales) Act 2015 and includes local planning authorities and the Welsh Ministers.
12. The section does not change the current law in relation to the matters to which a decision maker must have regard when dealing with an application for planning permission under Part 3 of the TCPA 1990.
13. The section replaces and so repeals elements of section 39 of the PCPA 2004.

### **Part 3 Development Planning**

#### **Section 3 – Preparing and revising the National Development Framework for Wales**

14. This section replaces section 60 of the PCPA 2004 (which provided for the Wales Spatial Plan) with sections 60 to 60C.
15. Section 60 requires the Welsh Ministers to prepare and publish a National Development Framework for Wales. The Framework sets out national policies in relation to the development and use of land in Wales, reflecting Government priorities, and taking account of marine and transport policies published by the Welsh Ministers. The Framework may also set out what may be development of national significance (for developments of national significance, see notes on Part 5, below). The Framework has effect for the period which it specifies.
16. Section 60A requires the Welsh Ministers to prepare a statement of public participation. The Welsh Ministers may review and revise the statement at any time. The statement must set out how and when consultation takes place and how the public will be involved in the preparation of the Framework. As part of this, there must be consultation on a draft of the Framework. The consultation period is 12 weeks from the date of publication of the draft Framework.
17. Section 60B requires the Welsh Ministers to carry out a sustainability appraisal of the draft Framework. The appraisal must include an assessment of the likely effects of the policies in the draft Framework on the use of the Welsh language.
18. Section 60B also requires the Welsh Ministers to lay the draft Framework before the National Assembly for Wales, together with a report summarising representations received during the consultation and explaining how they have been considered. The Assembly has a period for scrutiny of 60 days from the date the draft is laid, disregarding any days the Assembly is dissolved and any periods of recess longer than four days.
19. The Welsh Ministers must have regard to any resolution passed by the Assembly or recommendation made by a committee of the Assembly about the draft Framework during the scrutiny period.
20. After the 60 day scrutiny period the Welsh Ministers may publish the Framework. However, if the Welsh Ministers propose changes to the Framework, they may lay before the Assembly an amended draft and publish that version. The Welsh Ministers must also, when publishing the final form of the Framework, lay before the Assembly a statement explaining how they have taken account of any resolution passed by the Assembly or any recommendation by an Assembly committee made during the scrutiny period.
21. Section 60C requires the Welsh Ministers to keep the Framework under review. The Framework may be revised at any time. If 5 years elapse without a revised Framework having been published or a draft revision having been laid before the Assembly, the Welsh Ministers must publish a statement stating whether they think the Framework should be revised and giving reasons. If the Framework is to be revised, the same procedures for consultation and scrutiny apply as described above.

## **Section 4 – Designating strategic planning areas and establishing Strategic Planning Panels**

22. This section inserts sections 60D to 60G into the PCPA 2004.
23. Section 60D enables the Welsh Ministers to make regulations designating a strategic planning area and establishing a strategic planning panel for that area. A 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.
24. Section 60D also introduces Schedule 2A to the PCPA 2004. Schedule 2A makes provision about the membership, administration and financial arrangements of a strategic planning panel. It is inserted into the PCPA 2004 by Schedule 1 to the Act.
25. Before making regulations under section 60D, the Welsh Ministers must have issued a direction under section 60E to one or more local planning authorities, who must have either submitted a proposal for an area to be designated or 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. The circumstances in which consultation is required are set out in section 60F and described below.
26. Section 60E enables the Welsh Ministers to direct one or more local planning authorities to submit a proposal for a strategic planning area. The Welsh Ministers must give their reasons for the direction. The local planning authority or authorities receiving the direction is the "responsible authority". The responsible authority must: prepare a proposal for the designation of a strategic planning area, including a map of the boundary; consult on its proposal; and submit all of the information to the Welsh Ministers within the set period. This set period is six months unless a period is stated in the direction. The period may be extended if agreed by the Welsh Ministers. Following receipt of a proposal, the Welsh Ministers may proceed to make regulations to establish the strategic planning panel and designate the area. If the Welsh Ministers decide not to designate an area, they must give notice of that decision and the reasons for it to the responsible authority and each other authority included in the direction.
27. Section 60F sets out consultation requirements if: the Welsh Ministers do not agree with the proposal submitted by the responsible authority; no proposal has been submitted in the set time period by the responsible authority; or regulations are to be amended or revoked. If the Welsh Ministers wish to designate a different strategic planning area from that proposed by the responsible authority, they must consult those local planning authorities within the area that they wish 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.

28. Section 60G provides that, if the Welsh Ministers request information from local planning authorities that they need to carry out their functions relating to the designation of strategic planning areas, the authorities must provide the information.

### **Section 5 – Strategic planning areas: survey**

29. This section inserts section 60H into the PCPA 2004.
30. Section 60H provides that strategic planning panels must keep under review matters which are expected to affect the development of the strategic planning area. It does this by applying section 61(2) to (5) of the PCPA 2004 to strategic planning panels. Section 61(2) lists matters which must be kept under review, such as the principal characteristics of an area, purposes for which land is used, population, communications and transport systems. (Section 11 of the Act also amends section 61(2) by updating the matters mentioned in paragraph (a) so that review of the principal characteristics of the strategic planning area must include consideration of the extent to which the Welsh language is used in the area.)
31. In addition to the matters listed in section 61(2), subsection (3) provides that a strategic planning panel must review any changes that might occur in respect of any of the other matters and their effect on the development of the strategic planning area or on the planning of such development. Subsection (4) extends the review of the matters listed in sub-sections (2) and (3) to consideration of those matters in any neighbouring area which might affect the strategic planning area. Subsection (5) imposes a requirement on a panel to consult neighbouring local planning authorities for the purpose of undertaking a review of matters in respect of a neighbouring area.

### **Section 6– Preparing and revising Strategic Development Plans**

32. This section inserts section 60I into the PCPA 2004.
33. Section 60I requires 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 be in general conformity with the National Development Framework.
34. Regarding the expression “general conformity” which is used in this section, the Court of Appeal considered the meaning of the general conformity requirement between structure and local plans in the case *Persimmon Homes (Thames Valley) Limited v Stevenage Borough Council* [2005] EWCA Civ 1365. Lord Justice Laws held that, in view of the long lead-times over which plans are implemented, a flexible approach should be taken to the phrase “general conformity” to accommodate the various and changing contingencies that could arise. Whether there was general conformity between plans was a matter of planning judgment for the planning authorities (in that case the local planning authority). It is expected that this approach would also apply to conformity between strategic development plans and the National Development Framework.

35. The strategic planning panel are to have regard to certain matters when preparing a strategic development plan. Strategic development plans are to be subject to a sustainability appraisal which must include an assessment of the likely effects of the plan on the use of the Welsh language. The Welsh Ministers may make regulations about the form and content of strategic development plans and the plan period. The strategic development plan has effect as a development plan for the period specified in the plan.
36. Section 60J sets out how relevant sections in Part 6 of the PCPA 2004, which provide for how a local development plan is produced, apply to strategic development plans. Most of those sections 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 is the same. The local development plan preparation process set out in Part 6 of the PCPA 2004 and regulations, involves review and development of an evidence base; preparation and submission of a delivery agreement; preparation of the pre-deposit plan; placing the plan on deposit; submission of the plan for independent examination (to the Planning Inspectorate appointed by the Welsh Ministers); receipt of the Inspector's report identifying required changes to the deposit plan; and adoption and publication of the plan. A local development plan is also subject to monitoring and review procedures.
37. The Welsh Ministers have power by virtue of section 60J to intervene through a direction or by calling the plan in for their approval.

### **Section 7 – Conformity of certain plans and schemes with National Development Framework and Strategic Development Plan**

38. This section amends section 62 of the PCPA 2004. It requires a local development plan to be in general conformity with the National Development Framework and any strategic development plan for the local planning authority's area (see paragraph 34 above for comment on the term "general conformity").
39. This section also amends section 83 of the TCPA 1990 in relation to simplified planning zone schemes made by local planning authorities. (Under section 82 of the TCPA 1990, 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.) The amendment to section 83 requires a simplified planning zone scheme in Wales to be in general conformity with the National Development Framework and any relevant strategic development plan.

### **Section 8 – Duty to consider whether to review Local Development Plan**

40. This section inserts section 68A into the PCPA 2004. It provides that following publication or revision of the National Development Framework or the adoption or approval of a strategic development plan, a local planning authority must consider whether to review its local development plan.

41. This section makes a consequential amendment to section 69 of the PCPA 2004. (Section 69 deals with reviews of local development plans.)

### **Section 9 – National Development Framework and Strategic Development Plan to form part of development plan**

42. This section amends section 38(4) of the PCPA 2004 so that the development plan for any area of Wales consists of the National Development Framework, the strategic development plan and the local development plan.
43. Section 70 of the TCPA 1990 states that when dealing with an application for planning permission, a local planning authority must have regard to the development plan and other material considerations. Section 38(6) of the PCPA 2004 requires that where regard is to be had to a development plan, applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The effect of the amendment made by section 9 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 plan.

### **Section 10 – Land affected by National Development Framework or Strategic Development Plan**

44. Property values often slump when land is affected by a proposed public work such as a new motorway or railway; this is known as planning “blight”. Part 6 and Schedule 13 of the TCPA 1990 deal with blighted land and provide that in certain circumstances landowners affected can require local authorities to buy their land.
45. Section 149 in Part 6 of the TCPA 1990 introduces Schedule 13, which sets out what may be treated as blighted land (not all land affected by proposed development will be “blighted land”). Other provisions in Part 6 set out the procedure for an owner of blighted land to require a local authority to acquire the owner’s interest in the land.
46. Under section 150 in Part 6, the owner of land considered blighted by the proposals of a public authority may, if certain conditions are fulfilled, serve notice on the authority requiring the authority to purchase the owner's interest in the land. The price for the land is its market value ignoring the effects of the development causing the blight.
47. Consequential amendments are made in this section to Part 6 of and Schedule 13 to the TCPA 1990 as a result of the introduction of the National Development Framework and strategic development plans. References to the National Development Framework and strategic development plan are inserted into Schedule 13. 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. The effect is that owners of land blighted by proposals in the Framework or in a strategic development plan are treated the same way as those affected by other planning proposals.

### **Section 11 – Welsh language**

48. Section 11 amends sections 61 and 62 of the PCPA 2004.
49. The effect of the amendment to section 61 is that the matters affecting the development of the area that must be kept under review now include the use of the Welsh language. This applies to local planning authorities and (by virtue of section 5 of the Act) to strategic planning panels.
50. The amendment to section 62 requires a sustainability appraisal of the local development plan to include an assessment of the likely effects of the plan on the use of the Welsh language.

### **Section 12 – Period for which Local Development Plan has effect**

51. This section amends section 62 of the PCPA 2004. It requires a period to be stated in a local development plan during which the plan has effect and after which it ceases to be a development plan. The Welsh Ministers have power to make regulations about plan periods.

### **Section 13 – Withdrawal of Local Development Plan**

52. This section replaces section 66 of the PCPA 2004 with new sections 66 and 66A.
53. The effect of the new section 66 is that the Welsh Ministers have 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.
54. The new section 66A of the PCPA 2004 sets out how a local development plan can be withdrawn if there is no direction from the Welsh Ministers. Section 66A(3)(a) provides that where the Welsh Ministers have directed a local planning authority to submit the local development plan to them for approval in accordance with section 65(4) (which may be at any time before a local development plan is adopted) a local planning authority may not withdraw the plan.
55. Similarly, a local development plan may not be withdrawn by a local planning authority if the Welsh Ministers have taken any step relating to the plan under section 71 (Welsh Ministers' intervention powers). Section 71 applies if the Welsh Ministers think that a local planning authority are failing or omitting to do anything which is necessary in connection with the preparation, revision or adoption of a local development plan. The steps that may be taken by the Welsh Ministers in accordance with section 71 include holding an independent examination (in relation to which section 64(4) to (7) apply), preparing, revising and approving a local development plan (see subsection (3)(b)).
56. After a 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 (see subsection (4)).



57. A local planning authority may withdraw a plan which has reached a stage specified in regulations (e.g. publication of pre deposit proposals or deposit plan or another stage in the development of the plan) and which has not yet been submitted for examination, only if the local planning authority have given notice of their intention to withdraw their plan to the Welsh Ministers and the notice period relating to notification to withdraw has expired (see subsections (5) and (6)). The notice period for withdrawal is specified in regulations, see subsection (9).
58. On receipt of notification by the Welsh Ministers of a local planning authority's intention to withdraw a plan, the Welsh Ministers may direct the authority to provide further information and/or may extend the notice period (see sub-section (7)).
59. Provision may be included in regulations made by the Welsh Ministers about the giving of notice of intention to withdraw a local development plan (see subsection (8)).

#### **Section 14 – Welsh Ministers' power to direct preparation of joint Local Development Plan**

60. This section amends section 72 of the PCPA 2004, which allows local planning authorities to prepare a joint local development plan. The effect of the amendment is to give the Welsh Ministers a new power to direct two or more local planning authorities to prepare a joint local development plan and to require the Welsh Ministers to state their reasons for doing so. This power does not extend to National Park authorities.
61. 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 provisions 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 15 – Joint planning boards: functions relating to surveys and Local Development Plans**

62. The Welsh Ministers currently have power under section 2(1B) of the TCPA 1990 to establish a joint planning board as the local planning authority for a united district comprising two or more areas each of which is the whole or part of a Welsh county or county borough.
63. Section 15 amends the definition of "local planning authority" in section 78 of the PCPA 2004 to include a joint planning board. The effect of the amendment is 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. (For the community infrastructure levy, see Part 11 of the Planning Act 2008.)

64. This section also amends section 62 of the PCPA 2004 to require a joint planning board to have regard to the local well-being plan(s) for its area when preparing a local development plan. (For local well-being plans, see section 39 of the Well-being of Future Generations (Wales) Act 2015.)
65. Section 41 of the Act enables the Welsh Ministers to make changes to the power to establish joint planning boards, see paragraphs 161 to 163 below.

### **Section 16 – Development planning: further amendments**

66. This section introduces Schedule 2. Schedule 2 contains consequential amendments to various Acts.

### **Part 4 Pre-application procedure**

#### **Section 17 – Requirement to carry out pre-application consultation**

67. This section inserts section 61Z into the TCPA 1990.
68. The effect of the new section is that pre-application consultation must 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 types of development that could be specified for the purposes of this provision include, for example, major development and developments of national significance. The proposed application must be publicised in a way that is expected to bring the proposal to the attention of owners and occupiers of premises in the vicinity of the development site. The Welsh Ministers may specify, by development order, other persons who must be consulted by the applicant about the proposed application.
69. The duty will not apply to urgent Crown development or any other cases that may be specified in a development order. Cases that could be specified in a development order for the purposes of this provision include, for example, applications for planning permission to develop land without compliance with conditions attached to previous planning permission and applications for minor material amendments to planning permission.
70. Under section 61Z the Welsh Ministers may make further provision 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. The Welsh Ministers may require 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.
71. Section 17 also inserts subsections (9), (10) and (11) into section 62 of the TCPA 1990. These new subsections provide that the Welsh Ministers must provide in a development order for a consultation report to accompany a planning application where the applicant has been required to carry out pre-application consultation. The report must contain particulars of the pre-application consultation undertaken by the applicant, the responses received and how the responses have been taken into account by the applicant. A development order may make provision about the form and content of the consultation report.

## **Section 18 – Requirement to provide pre-application services**

72. This section inserts sections 61Z1 and 61Z2 into the TCPA 1990.
73. Section 61Z1 gives the Welsh Ministers power to make regulations about the provision of pre-application services by local planning authorities or the Welsh Ministers. Pre-application services are intended to assist a person who is proposing to make a planning application. 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.
74. The nature of the services to be provided could include, for example, the provision of details of relevant planning policies and guidance or the views of planning officers on the merits of a proposal.
75. Section 61Z2 confers power on the Welsh Ministers to make regulations requiring 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 5 Applications to the Welsh Ministers**

### **Section 19 – Developments of national significance: applications for planning permission**

76. This section inserts sections 62D and 62E into the TCPA 1990.
77. Section 62D requires that planning applications for development of national significance (“DNS”) are 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 proposed development is of national significance. (Outline planning permission is permission which is granted subject to detailed matters being reserved for subsequent approval.)
78. The Welsh Ministers may give “national significance” to a development in two ways.
79. Firstly, the Welsh Ministers may set out criteria for DNS in regulations. A development in Wales will be of national significance if it meets those criteria. Regulations could, for example, give national significance to onshore generating stations of a certain capacity, or airport and rail related development of a certain scale.
80. Secondly, a development in Wales will be of national significance if it is described as such in the National Development Framework.
81. An application for planning permission to vary conditions attached to a previous planning permission (whether for DNS or other development) is not to be treated as an application for DNS unless the application is of a description prescribed in regulations by the Welsh Ministers.

82. A person who proposes to make a DNS application must notify the Welsh Ministers and the local planning authority to which the application would otherwise have been made. 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.
83. This section also requires that the Welsh Ministers must give notice to the person proposing the application that the notification has been accepted. The Welsh Ministers may make provision in regulations about the giving of such notice. This may include provision about the form and content of the notice and the way in which and the period within which it is given. Any step taken in respect of an application before such notice has been given does not constitute consultation about the application, which means that the Welsh Ministers must be notified of proposed applications before consultation takes place. A requirement to consult could arise where DNS applications have been prescribed in a development order for the purposes of section 61Z (inserted by section 17).

### **Section 20 – Developments of national significance: secondary consents**

84. This section inserts sections 62F, 62G and 62H into the TCPA 1990.
85. Section 62F allows the Welsh Ministers to make decisions on consents which they consider to be connected to an application for DNS, in place of the normal consenting authority. A decision of the Welsh Ministers on a secondary consent is final, which means that there is no right of appeal to the Welsh Ministers.
86. 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 how 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. There may for example be a need to modify a timetable applicable to a secondary consent to fit with the timetable for determining a DNS application.
87. Section 62H defines a secondary consent and when it is connected to an application for DNS. A secondary consent is a consent which is required in order for the proposed development to be undertaken. The section gives the Welsh Ministers power to prescribe secondary consents in regulations. Secondary consents could include:
- a) outline or full planning permission for development associated with the DNS development, such as access roads, office accommodation or visitor centres;
  - b) reserved matters approval for associated development;
  - c) listed building consent under the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - d) scheduled monument consent under section 2 of the Ancient Monuments and Archaeological Areas Act 1979;
  - e) the exchange of common land under sections 16 and 17 of the Commons Act 2006; and

- f) consent for works on common land under sections 38 and 39 of the Commons Act 2006.

### **Section 21 – Developments of national significance: local impact reports**

- 88. This section inserts sections 62I, 62J and 62K into the TCPA 1990 and makes provision for local impact reports. A local impact report describes the impact of a proposed development on the area (see section 62K and paragraph 92 below).
- 89. Section 62I makes provision about the submission of a local impact report in relation to DNS applications under section 62D. The Welsh Ministers must give notice to each relevant local planning authority, requiring a local impact report in respect of an application for DNS. An authority to which notice is given must submit a report. 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.
- 90. 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.
- 91. Any other local planning authority and any community council may submit a voluntary local impact report in relation to an application for DNS. The Welsh Ministers must have regard to any such report in dealing with an application. The Welsh Ministers may make provision in a development order about the submission of voluntary local impact reports. For example, provision could be made to the manner in which a voluntary local impact report is to be submitted to the Welsh Ministers, or about the timescales within such report is to be submitted.
- 92. Section 62K provides that a local impact report is a report in writing that gives details of the likely impact of the proposed development on the area of the authority or community council and complies with any requirements set out in a development order. For example, provision could be made specifying the form and content of such a report, such as information to be provided to the Welsh Ministers in relation to the land in question.

### **Section 22 – Timetable for determining applications**

- 93. This section inserts section 62L into the TCPA 1990.
- 94. Section 62L places the Welsh Ministers under a duty to determine an application for DNS, and make any decision about a secondary consent that is connected to it, before the end of the “determination period”. This is the period of 36 weeks starting on the date the application is accepted by the Welsh Ministers. The Welsh Ministers must report annually to the National Assembly for Wales on their compliance with this requirement.

95. The Welsh Ministers may by order, substitute a different period as the determination period. They may, also by development order, provide what constitutes “acceptance” of an application. Such an order could, for example, provide that acceptance of an application is contingent on the Welsh Ministers confirming that they are satisfied that an application complies with all prescribed requirements.
96. The section also enables the Welsh Ministers, by notice, to suspend the determination period in any particular case, and to terminate, reduce or extend a period of suspension. Any such notice must be issued to the applicant, the local planning authority to which the application would have otherwise been made and any representative persons that the Welsh Ministers consider appropriate. A development order may provide how and when such a notice is given. The Welsh Ministers must report annually to the National Assembly for Wales on their exercise of these functions.
97. Sections 24 to 27 of the Act make further provision about the procedure for determining DNS applications. The effect of these sections is described below.

### **Section 23 – Option to make application to Welsh Ministers**

98. This section inserts sections 62M, 62N and 62O into the TCPA 1990.
99. Section 62M 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 have been designated by the Welsh Ministers. The applicant will be able to choose whether to apply to the local planning authority or the Welsh Ministers.
100. The Welsh Ministers may prescribe in regulations the types of development to which the right to make such an application applies. It is likely that major development will be prescribed. “Major development” is defined in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, S.I. 2012 No 801 (W. 110), see Article 2(1). In brief, major development is (a) mining operations (b) the use of land for mineral-working deposits; (c) housing development of 10 houses or more or on a site of 0.5 hectares or more; (d) buildings with a floor space of 1000 square metres or more; (e) development on land of 1 hectare or more
101. The Welsh Ministers must publish the criteria for designating a local planning authority and for revoking a designation. Such criteria could, for example, focus on the speed within which certain applications are determined by local planning authorities, and/or the frequency with which such determinations are overturned on appeal.
102. Section 62N sets out the conditions the criteria must meet before they can be applied by the Welsh Ministers. The conditions require consultation by the Welsh Ministers with each local planning authority in Wales, the Assembly not voting against the criteria, and publication.

103. The Welsh Ministers must give notice of the designation or revocation in writing to the local planning authority concerned. The Welsh Ministers must publish a copy of such notice.
104. Urban development corporations may not be designated. (For urban development corporations see Part 16 of the Local Government, Planning and Land Act 1980.)
105. Section 62O applies where an application is made to the Welsh Ministers under section 62M. 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. An application is a “connected application” if it:
  - a) is made under the Planning Acts (for these purposes the TCPA 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990),
  - b) relates to land in Wales;
  - c) is described for this purpose in regulations made by the Welsh Ministers; and
  - d) is connected with the principal application.
106. Where the Welsh Ministers consider an application is either not connected with the principal application, 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 24 – Further provision about applications made to Welsh Ministers**

107. This section inserts sections 62P and 62Q into the TCPA 1990.
108. Section 62P states that a decision of the Welsh Ministers on an application made to them under sections 62D, 62M and 62O is final (resulting in no right of appeal to the Welsh Ministers). However, as a result of amendments made to Part 12 of the TCPA 1990 by Schedule 4, the validity of such decisions may in certain circumstances be questioned on an application to the High Court.
109. The Welsh Ministers may direct a local planning authority or hazardous substances authority to do things in relation to an application made under those sections.
110. Section 62Q imposes a duty on the Welsh Ministers to notify a community council of applications made to the Welsh Ministers under sections 62D, 62F, 62M or 62O where the application relates 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 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 25 – Power to make provision by development order in respect of applications to Welsh Ministers**

111. This section inserts section 62R into the TCPA 1990.
112. The effect is that the Welsh Ministers may make provision in a development order about the way in which applications made to them are dealt with. This includes provision about consultation by the Welsh Ministers and variation of applications.

**Section 26 – Developments of national significance and applications made to Welsh Ministers: exercise of functions by appointed person**

113. This section inserts section 62S into the TCPA 1990. Section 62S introduces a new Schedule 4D to the TCPA 1990, which is set out in Schedule 3 to this Act.

**Section 27 – Applications to Welsh Ministers: further amendments**

114. This section introduces Schedule 4. Schedule 4 makes consequential amendments in relation to applications to the Welsh Ministers.

**Part 6 Development Management etc**

**Section 28 – Power of local planning authority to require information with application**

115. This section applies section 62(4A) of the TCPA 1990 to Wales. The subsection relates to local planning authorities' power to require information to accompany planning applications. Information requests must be reasonable and relevant.

**Section 29 – Invalid applications: notice and appeal**

116. This section inserts sections 62ZA, 62ZB, 62ZC and 62ZD into the TCPA 1990, to allow for a right of appeal against a local planning authority's decision that an application is not valid. The sections apply to applications for planning permission and for any consent, agreement or approval related to planning permission.
117. Section 62ZA requires a local planning authority to give formal notice to an applicant where they consider that the application submitted to them does not comply with certain information requirements and therefore invalid. The notice must identify the requirement in question and set out the authority's reasons for thinking the application does not comply with it. The Welsh Ministers, by development order, may make provision about the giving of notice, including the information to be included and how and when it is to be given.
118. Section 62ZB provides applicants with a right of appeal to the Welsh Ministers where the local planning authority has served notice under section 62ZA that an application is considered invalid, on one or more stated grounds. The Welsh Ministers may, by development order, prescribe requirements for submitting an 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.



119. 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.
120. 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.
121. 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 30 – Revocation of saving of Town and Country Planning (Applications) Regulations 1988**

122. This section revokes the saving of the Town and Country Planning (Application) Regulations 1988. The effect is that those regulations, which were made under an earlier Town and Country Planning Act and concern the procedures for planning applications, are fully revoked. The procedures for applications under the TCPA 1990 are now set out in development orders under section 62 of the TCPA 1990.

### **Section 31 – Welsh language**

123. This section amends section 70 of the TCPA 1990. Section 70 makes provision about the matters to which a local planning authority must have regard when dealing with an application for planning permission. The effect of the amendment is that a local planning authority in Wales must have regard to considerations relating to the use of the Welsh language if such considerations are material to the application. The amendments to section 70 do not change the current law in relation to material considerations.

### **Section 32 – Power to decline to determine retrospective applications**

124. 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 33 – Decision notices**

125. This section inserts section 71ZA into the TCPA 1990.
126. Section 71ZA enables the Welsh Ministers by development order to specify the form that notices of decisions on applications for planning permission should take, the manner in which they are to be given, and the particulars to be contained in them. These notices are referred to as “decision notices”.

127. The new section requires a decision notice to specify any plans or other documents that form part of the planning permission. The planning permission is 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.
128. Section 71ZA also 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, which might include a requirement to state whether a condition has been discharged or approved and, if it has, the date of the approval and reference number relating to the details submitted.
129. The provision applies whether planning permission is granted by local planning authorities or the Welsh Ministers. 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 Welsh Ministers in relation to purchase notice) of the TCPA 1990.

#### **Section 34 – Notification of development**

130. This section inserts section 71ZB into the TCPA 1990.
131. Section 71ZB 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. The new 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.
132. It also enables the Welsh Ministers by a development order to specify the categories of planning permission to which the requirement applies (for example, developments of national significance and major development); the form and content of such notices; and how a copy of the grant of planning permission must be displayed.
133. It requires, where relevant, decision notices to set out the duties to be undertaken by the developer in relation to giving and displaying notices. Planning permission is to be granted subject to the deemed condition that these requirements must be complied with.

#### **Section 35 – Duration of planning permission: general**

134. 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).

135. Subsections (3ZA) and (3ZB) apply if planning permission is granted under section 73 of the TCPA 1990 which varies or removes conditions from a previous grant of planning permission. If the section 73 permission is granted without a time limit condition and the previous planning permission was granted subject to a time limit condition, the section 73 permission is 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.
136. Subsection (3ZC) and (3ZD) define the term previous planning permission and section 73 permission.

### **Section 36 – Duration of outline planning permission**

137. 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).
138. The term ‘outline planning permission’ is defined, for the purposes of sections 91 and 92 of the TCPA 1990, in section 92(1). It means planning permission granted with matters reserved for subsequent approval by the local planning authority or the Welsh Ministers.
139. 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 is 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 lapses.
140. 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.
141. Subsection (3E) defines a previous planning permission.

### **Section 37 – Consultation etc. in respect of certain applications relating to planning permission**

142. 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 any other 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.

143. This section provides that where a local planning authority decide to consult a statutory consultee who was consulted on the original application, the authority 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.
144. It also enables the 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 38 – Stopping up or diversion of public paths where application for planning permission made**

145. This section amends sections 257 of the TCPA 1990 to enable the process leading to the stopping up or diversion of public paths to start once an application for planning permission has been made but before planning permission has been granted.
146. Section 257 currently enables an order authorising the stopping up or diversion of footpaths (and certain other paths) where this is necessary in order to enable development to be carried out in accordance with planning permission (or by a government department). The amendment enables an order stopping up or diverting a public path to be made in anticipation of planning permission.
147. The section also amends section 259 of the TCPA 1990 so that the competent authority or Welsh Ministers may not confirm a stopping up or diversion order until planning permission has actually been granted. It further amends section 259 so that the competent authority or Welsh Ministers may not confirm an order unless satisfied that it is necessary to enable the development to be carried out.

### **Section 39 – Exercise of functions of local planning authority relating to applications**

148. Section 39(1) of the Act inserts sections 319ZA, 319ZB, 319ZC and 319ZD into the TCPA 1990.
149. Section 319ZA enables the 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. For example, regulations might provide for a national scheme of delegation relating to planning applications under Part 3 of the TCPA 1990. The scheme might make provision for all applications to be delegated to appointed officers for determination apart from certain exceptions.
150. Section 319ZB enables the 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 of the Local Government Act 1972 whereby proceedings are not invalid if there is a vacancy in a committee or sub-committee.

151. 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.
152. 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.) References to arrangements under sections 101 and 102 of the 1972 Act in other legislation will apply to the arrangements required by the new sections 319ZA and 319ZB, this includes sections 13 and 20 of the Local Government and Housing Act 1989 (see below).
153. New section 319ZC enables regulations to make specific provision for cases where local planning authorities are exercising functions jointly or where one local planning authority exercises functions for another local planning authority.
154. Section 319ZD provides interpretation for the purposes of the above sections.
155. Section 39(2) of the Act makes a related amendment to section 316(3) of the TCPA 1990. Section 316 of TCPA 1990 deals with delegations in a particular type of case. The section confers a power to make regulations about the application of various Parts of TCPA 1990 to the land owned by local planning authorities. Under section 316(3) regulations may regulate a local planning authority's arrangements for discharging their functions when they determine applications relating to their own land, "notwithstanding anything in section 101 of the Local Government Act 1972". Section 39(2) of the Act inserts a reference to sections 319ZA to 319ZC, so that regulations under section 316(3) will prevail over sections 319ZA to 319ZC in the same way.
156. Section 39(3) and (4) of the Act inserts references to new sections 319ZA to 319ZC into the lists of general provisions of TCPA 1990 that are applied to the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning (Hazardous Substances) Act 1990.
157. Regulations under the new sections may identify the functions to which their requirements are to apply and the new provisions can be applied to the Listed Buildings and Hazardous Substances Acts.

158. Section 39(5) of the Act amends sections 13 and 20 of the Local Government and Housing Act 1989 so that those sections apply to a joint planning board constituted for an area in Wales by an order under section 2(1B) of the TCPA 1990. Section 13 of the 1989 Act makes provision about the voting rights of certain people that local authorities appoint to committees. Section 20 enables the Welsh Ministers to make regulations specifying procedural provisions that local authorities must include in their standing orders. Both sections already apply to the other authorities in Wales that can be local planning authorities, and the amendments put joint planning boards in the same position.

#### **Section 40 – Joint planning boards to be hazardous substances authorities**

159. Broadly speaking, the presence of a hazardous substance on or under land requires the consent of a hazardous substances authority. This section inserts a new subsection into section 3 of the Planning (Hazardous Substances) Act 1990 to establish that, save in certain circumstances, a joint planning board is a hazardous substances authority and will therefore exercise functions accordingly under that Act.

#### **Section 41 – Power to make provisions enabling joint planning boards to exercise development management functions in National Parks**

160. The Welsh Ministers have power under section 2(1B) of the TCPA 1990 to establish a joint planning board as the local planning authority for a united district comprising two or more areas each of which is the whole or part of a Welsh county or county borough. By virtue of section 2(1D) of the TCPA 1990, a joint planning board's united district cannot include any part of a National Park; and section 4A confirms that a National Park authority is the sole local planning authority for its National Park.
161. Section 41 of the Act enables the Welsh Ministers, by regulations, to remove this restriction and extend the joint planning board provisions in section 2 of the TCPA 1990 to include the areas of National Parks. Regulations under section 41 of the Act allow the Welsh Ministers to establish a united district that includes all or part of a National Park, and to establish a joint planning board to be the local planning authority in place of the National Park Authority for certain purposes.
162. Section 41 enables the establishment of a joint planning board as the local planning authority for any part of its area formed by a National Park for the purposes of the TCPA 1990 (which provides for matters including the determination of planning applications), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 but not for the purposes of the PCPA 2004 (which provides for matters including the preparation of local development plans). The effect of this is that if part or all of a National Park area is within the area of a joint planning board, the National Park Authority, not the joint planning board, prepares the local development plan for the National Park area.

163. The regulation making powers in this section allow the Welsh Ministers to determine, for any part of a joint planning board's area including a National Park, whether the joint planning board or the National Park Authority is the hazardous substances authority. The section also enables the Welsh Ministers, when exercising their regulation making powers, to amend legislation of certain descriptions.

### **Section 42 – Joint planning boards: power to make consequential and supplementary provision**

164. This section reorganises and inserts a new subsection into section 9 (Power to make consequential and supplementary provision about authorities) of the TCPA 1990.
165. It enables the Welsh Ministers, when making regulations containing provisions which are consequential upon or supplementary to the establishment of a joint planning board, to amend legislation of certain descriptions.

## **Part 7 Enforcement Appeals etc**

### **Section 43 – Breach of planning control: Enforcement warning notice**

166. This section inserts section 173ZA into the TCPA 1990.
167. Section 173ZA introduces enforcement warning notices. Local planning authorities are 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 must be served on the owner, occupier and any other person having an interest in the land. Notices must 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.
168. Enforcement warning notices constitute the taking of enforcement action and 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, by virtue of section 171B(4) of the TCPA 1990.

### **Section 44 – Appeal against enforcement notice: deemed application for planning permission**

169. Where an appeal is made to the Welsh Ministers against an enforcement notice, section 177(1) of the TCPA 1990 allows the Welsh Ministers to grant planning permission as an alternative to upholding the enforcement notice, and section 177(5) provides that the appellant is deemed to have applied for planning permission.
170. Section 44 of the Act amends section 177 to provide that the Welsh Ministers may only grant planning permission following an enforcement appeal if the appeal was made on ground (a) set out in section 174(2), i.e. on the ground that planning permission ought to be granted. Section 177(5) is also amended so that only ground (a) appeals result in a deemed application for planning permission.

### **Section 45 – Restrictions on right to appeal against planning decisions**

171. Section 45 amends section 78 of the TCPA 1990 by inserting new subsections (4AA) and (4AB).

172. The effect is to prevent consecutive appeals in respect of an unauthorised development. Subsection (4AA) prevents an appeal against the refusal of planning permission for development where that development has been the subject of an enforcement notice and planning permission for that development was not granted in an appeal against the 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 46 – Restrictions on right to appeal against enforcement notice**

173. This section amends section 174 of the TCPA 1990. It deals with the converse situation to that addressed by section 45. The amendment prevents appeals against enforcement notices being brought on the ground that planning permission ought to be granted, where the enforcement notice is issued after the Welsh Ministers on appeal have already upheld a decision to refuse planning permission for matters specified in the enforcement notice as constituting a breach of planning control. 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 47 – No variation of application after service of notice of appeal against planning decision etc.**

174. This section inserts new provisions into the sections of the planning Acts that deal with appeals against refusals or failures to grant planning applications and applications for listed buildings and hazardous substances consents.
175. 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, except in such circumstances as may be prescribed by a development order or regulations. If circumstances are prescribed, the order or regulations must provide for a varied application to be subject to such further consultation as the Welsh Ministers consider appropriate.

#### **Section 48 – Appeal against notice in respect of land adversely affecting amenity**

176. This section amends section 217 of the TCPA 1990.
177. The effect of the amendment is 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 Welsh Ministers may 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 continue to be dealt with by Magistrates.) Appeals against decisions made by the Welsh Ministers will be made to the High Court.



**Section 49 – Costs on applications, appeals and references**

178. This section inserts section 322C into the TCPA 1990. Section 322C replaces a number of existing provisions relating to the costs of planning applications and appeals that are considered by the Welsh Ministers, in particular provisions contained in sections 320, 322 and 322A of the TCPA 1990 and paragraph 6 of Schedule 6. Those provisions apply section 250(4) and (5) of the Local Government Act 1972, which relates to the costs of local inquiries, to planning proceedings for certain purposes. Section 250(4) and (5) deals with the powers of Ministers to require the parties to the proceedings to pay the Ministers' costs, and to require one party to pay the costs incurred by another party.
179. Section 322C brings all costs provisions relating to planning procedures into one place and applies whether matters proceed by way of written representations, hearing or inquiry. The section allows the Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and overheads. The section also allows the Welsh Ministers to prescribe a standard daily amount.
180. This is a standalone provision for costs to be awarded following 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 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. Subsection (6) enables the Welsh Ministers may make orders for costs. This means that one party can be ordered to pay another party's costs.

**Section 50 – Procedure for certain proceedings**

181. This section inserts section 323A into the TCPA 1990. Section 323A allows the Welsh Ministers to make regulations setting out the procedures for planning determinations, whether they proceed by way of written representations, hearing or inquiry.
182. Section 323A replaces section 323 of the TCPA 1990 in relation to Wales. Section 323 allowed the Welsh Ministers to make regulations for the procedure to be followed where matters were determined on the basis of written representations, rules for the procedure to be followed at hearings and inquiries being made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992. The Lord Chancellor's power to make rules for planning proceedings in Wales is replaced by the Welsh Ministers' power to make regulations under section 323A.

183. Section 323A 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 51 – Costs and procedure on appeals etc.: further amendments**

184. Section 51 introduces Schedule 5. Schedule 5 makes consequential, technical amendments.

## **Part 8 Town and Village Greens**

### **Section 52 – Statement by owner to end use of land as of right**

185. This section makes amendments to section 15A of the Commons Act 2006 so as to apply that section to Wales.
186. Applications can be made to register land as a town or village green under section 15 of the 2006 Act, broadly, where the land has been used “as of right” for lawful sports and pastimes by a significant number of people in the local community for at least twenty years. Use as of right means without force, secrecy or permission, the rationale being that a landowner must know and acquiesce in the land being so used.
187. Under section 15A of the 2006 Act, an owner of land may 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 53 – Exclusion of right to apply for registration**

188. This section makes amendments to section 15C of the Commons Act 2006 so as to apply that section to Wales.
189. Section 15C excludes the right of a person to apply for the registration of a town or village green under section 15(1) in certain circumstances. The circumstances in which the right is excluded in Wales are set out in a new Schedule 1B to the Commons Act 2006, the text of which is set out in Schedule 6.

### **Section 54 – Applications to amend registers: power to make provision about fees**

190. This section amends section 24 of the Commons Act 2006, which confers power on the Welsh Ministers to make regulations about applications to amend the register of common land and town or village greens.

191. The effect of the amendment is that fees may be payable not only to the person to whom the application is made, but also to the person who determines the application (if different), for example where an application is made to the commons registration authority but referred to the Planning Inspectorate for determination. The aim of this section is to allow for greater flexibility and targeting of fees, subject to secondary legislation and Assembly scrutiny.

## **Part 9 General Provisions**

### **Section 55 – Regulations and orders made by Welsh Ministers**

192. Section 55 introduces Schedule 7. Schedule 7 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 56 Interpretation**

193. Section 56 defines “PCPA 2004” and “TCPA 1990”.

### **Section 57 Power to make consequential etc provision**

194. Section 57 allows the Welsh Ministers to make provisions in regulations as may be necessary to give full effect to, or in consequence of, the Act. This includes power to amend Acts of Parliament or Acts or Measures of the National Assembly for Wales. If regulations do propose to amend Acts of Parliament or Acts or Measures of the Assembly, they cannot be made unless a draft is laid before and approved by the Assembly. In other circumstances, regulations may be made without prior approval of the Assembly, but may be annulled by the Assembly.

### **Section 58 – Coming into force**

195. This section sets out the provisions that come into effect on the date of Royal Assent; and those that come into force by commencement orders made by the Welsh Ministers. Provisions in Parts 2 to 7 come into force two months after Royal Assent to the extent necessary to enable the Welsh Ministers to exercise the function of making regulations and orders.

### **Schedule 1**

196. This Schedule inserts Schedule 2A into the PCPA 2004. It provides for the constitutional, financial and administrative arrangements of strategic planning panels.
197. Panels are bodies corporate. Paragraph 2 makes provision for the panel’s membership. The total number of members is to be prescribed in regulations. No member of the panel can be employed by the panel.
198. Two thirds of a panel’s members will be appointed by the constituent local planning authorities from among their eligible members. Paragraph 3 makes provision about the appointment of the local planning authority members of the panel. Regulations will specify the number to be appointed from each of the authorities but there will be at least one member from each authority.
199. One third of a panel’s members will be nominated members appointed by the panel. Paragraph 4 makes provision for the nominated members to be appointed.

200. A panel may make a request to any person, organisation or body to nominate an appropriate person to become a nominated member of the panel. The panel must appoint the person put forward by the nominating body. Paragraph 4 also sets out the procedure when a nominating body fails to make a nomination. In such circumstances the panel is required to make a further request or make a request to another nominating body. The panel must appoint the person put forward by the nominating body.
201. Paragraph 5 enables the Welsh Ministers to set out in regulations requirements about the composition of strategic planning panels including gender balance. The regulations may set out how the requirements are to be met, whether there are any exceptions to the requirements, what should happen if the requirements relating to composition are not met and gives the Welsh Ministers powers to intervene if the requirement is not met.
202. Paragraph 6 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.
203. Paragraph 7 specifies the form of allowances the panel's members may receive. They can only be reimbursed for any expenses incurred in carrying out their functions, for example 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. Part 2 of Schedule 1 to the Act amends the Measure to cover the setting of payments to panel members (see below).
204. Paragraph 8 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.
205. Paragraph 9 provides for 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. It also provides that if a person ceases to be an eligible member of a local planning authority the person's membership of the panel ends automatically; but members who are re-elected are able to remain on the panel.
206. Paragraph 10 provides that the panel must appoint a chair and a deputy chair from amongst the local planning authority members of a panel. A member may not be appointed chair or deputy chair for more than one year at a time, but may be 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.

207. Paragraph 11 provides the panel with the ability to employ staff and determine their terms and conditions.
208. Paragraph 12 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 nominated 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.
209. Paragraph 13 provides that the nominated members of the panel are not entitled to vote.
210. Paragraph 14 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. The standing orders must contain provision which requires at least half of the local planning authority members to be present for proceedings to be voted upon at meetings.
211. Paragraph 15 provides that meetings should be open to the public. If any meetings are not to be 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.
212. Paragraph 16 provides that the local planning authorities within the strategic planning 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.
213. Paragraph 17 provides for the process by which the panel will determine the proportion of its qualifying expenditure that must be met by each local planning authority. 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.

214. Paragraph 18 provides that the panel must prepare and publish an annual work programme, including a description of the activities that the panel intends to undertake in the next financial year. 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 programme by certain dates within the preceding 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.
215. Paragraph 19 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.
216. Paragraph 20 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.
217. Paragraph 21 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 30th 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 audit each statement of accounts and report to the local planning authorities and the Welsh Ministers within 4 months of the statement being submitted.
218. Paragraph 22 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 to the same deadline as the statement of accounts. The local planning authorities and the Welsh Ministers must receive a copy of the report.
219. Paragraph 23 defines the financial year for the panel (1 April to 31 March) and makes provision in relation to the first financial year of the panel.
220. Paragraph 24 provides that the panel and any local planning authority must have regard to guidance issued by the Welsh Ministers.

221. Paragraph 25 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 requirements set out in the Schedule for 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 to charge the panel for any work carried out on its behalf.
222. Paragraph 26 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.
223. Paragraph 27 provides the interpretation of terms used in the Schedule.
224. Paragraph 28 enables the Welsh Ministers to change the Schedule through regulations. The regulations are subject to affirmative procedure, which means they cannot be made unless approved by resolution of the Assembly (see amendments to section 122 of PCPA 2004 in paragraph 1 of Schedule 7).
225. Part 2 of Schedule 1 makes consequential amendments to other Acts and Measures.
226. 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.
227. 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.
228. 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 that Act from being a member of a constituent authority, that person is also suspended from being a member of a strategic planning panel.
229. 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.

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which received Royal Assent on 6 July 2015*

- 230. 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.
- 231. 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 that Act.
- 232. 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 Measure.
- 233. 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**

- 234. This Schedule makes consequential amendments to other Acts to the general effect that a strategic planning panel are to be consulted or notified in relation to the exercise of certain functions under those Acts mentioned in the Schedule.
- 235. This Schedule also makes amendments to other Acts. These amendments are consequential on the provision made by Part 3 of the Act in relation to the National Development Framework, strategic planning panels, strategic development plans and local development plans.

**Schedule 3**

- 236. This schedule inserts Schedule 4D into the TCPA 1990.
- 237. Schedule 4D is very similar to the existing provisions (in Schedule 6 TCPA) about the determination of appeals made to the Welsh Ministers. Certain functions in relation to an application for planning permission for development of national significance (DNS) 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. The Welsh Ministers may appoint an assessor to assist the person holding a hearing or local inquiry into an application made directly to the Welsh Ministers.

**Schedule 4**

- 238. This Schedule makes various further amendments (consequential on other provision made by the Act or otherwise) to the TCPA 1990. They include amendments which:



- a) enable the Welsh Ministers by means of development order to apply, with or without modifications, any applicable enactment or requirements imposed by legislation, to applications made to the Welsh Ministers under sections 62D, 62M or 62O. Applicable enactments which may be modified may include for example section 62 TCPA 1990, which allows a development order to make provision in relation to applications made to local planning authorities;
- 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 decision on a secondary consent or 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);
- f) extend section 319B TCPA 1990 to applications made under sections 62D, 62M and 62O to the Welsh Ministers and thus require the Welsh Ministers to determine the applicable procedure by which any such application is to be determined; and
- g) provide rights of entry for the Welsh Ministers onto land which is subject to a DNS application or a connected application.

### **Schedule 5**

239. 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 7. The effect of the amendment in paragraph 27, to the Tribunals and Inquiries Act 1992 is to remove planning Act hearings and inquiries in Wales from the inquiries in relation to which the Lord Chancellor may make procedure rules under section 9 of that Act.

### **Schedule 6**

240. Schedule 6 as introduced by section 53(3) inserts Schedule 1B into the Commons Act 2006.

241. 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. These are the grant of planning permission under TCPA 1990 or of development consent under the Planning Act 2008. Each of those trigger events is accompanied by a corresponding set of “terminating events”, upon which the right under section 15(1) becomes exercisable again. These include the expiry, revocation or quashing of the relevant permission or consent.

## **Schedule 7**

242. Schedule 7 makes a number of amendments to the PCPA 2004, the TCPA 1990 and the Commons Act 2006. The amendments relate to the powers of the Welsh Ministers to make orders and regulations under those Acts. They bring the relevant provisions in each Act together in one place, update some terminology, and apply appropriate procedures to new powers to make orders and regulations that are inserted into each Act.
243. In relation to the PCPA 2004, paragraph 1 provides that the approval of the National Assembly for Wales 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 first obtaining Assembly approval. The Assembly will have power to annul any regulations or orders so made.
244. 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 first obtaining Assembly approval but in most cases can be annulled by the Assembly.
245. Paragraph 5 makes similar provision in relation to orders made under the TCPA 1990. Most orders can be made without the Welsh Ministers first obtaining Assembly approval but can be annulled by the Assembly. The only orders which require Assembly approval before being made are orders under sections 62L(9), 293(1)(c) and 319B(9). (An order under section 62L(9) allows the Welsh Ministers to change the determination period, see paragraph 95 above. An order under section 293(1)(c) allows the Welsh Ministers to specify “Crown interests” for the purposes of Part 13 of that Act. An order under section 319B (9) allows the Welsh Ministers to add or remove proceedings to which that section applies.)
246. 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 first obtaining Assembly approval but can be annulled by the Assembly.
247. The Schedule makes further amendments required as a result of those changes.

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## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

248. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=11271>

<b>Stage</b>	<b>Date</b>
Introduced	6 October 2014
Stage 1 - Debate	10 February 2015
Stage 2 Scrutiny Committee - consideration of amendments	18 March 2015
Stage 3 Plenary - consideration of amendments	27 March 2015
Stage 4 Approved by the Assembly	19 May 2015
Royal Assent	6 July 2015