



Llywodraeth Cymru
Welsh Government

PLANNING (WALES) BILL

Statements of Policy Intent

November 2014

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1. Introduction

- 1.1 These statements of policy intent set out the current policy approach for the subordinate legislation for the Planning (Wales) Bill. Each of these policy areas will be subject to their own consultation and scrutiny process and therefore may be subject to change. These statements are to assist the responsible Committee during the scrutiny of the Planning (Wales) Bill.
- 1.2 The Welsh Government considers that these subordinate legislation powers are essential in order to prescribe matters of procedural detail and provide flexibility for matters which may require adjustment to facilitate effective implementation and operation.
- 1.3 Details of the Assembly procedure for each subordinate legislative power is set out in detail in chapter 5 of the Explanatory Memorandum. The approach taken to Assembly procedures reflects the Guidelines published in January 2012 by the Counsel General and looks to ensure a consistent approach. In addition, the Planning (Wales) Bill amends existing framework legislation backed up by subordinate legislation. A key consideration was to maintain the stability of existing planning regime so as not to create uncertainty or unbalance the current planning system in Wales.
- 1.4 A number of consultation papers have been produced alongside the scrutiny of the Bill which will provide further detail on certain provisions; these are:
 - Frontloading the development management system: Part 3 Sections 15 and 16; Part 5 Section 35
<http://wales.gov.uk/consultations/planning/frontloading-the-development-management-system/?status=open&lang=en>
 - Planning Committees, delegation and joint planning boards: Part 5 Section 37
<http://wales.gov.uk/consultations/planning/amendments-to-easements-and-other-rights/?status=open&lang=en>
 - Design in the planning process: Part 5 Section 27
<http://wales.gov.uk/consultations/planning/design-in-the-planning-process/?status=open&lang=en>

2. Strategic Development Plans

Power(s): Part 2, Section 3 and 5

[60D(1), 60I(5) and 60I(6)(f) Planning and Compulsory Purchase Act 2004]

Description:

2.1 These powers enable the Welsh Ministers to:

- Establish a Strategic Planning Panel for an area and designate this area as a strategic planning area by order;
- Set out the provisions about the form, content and plan period for Strategic Development Plans within regulations; and
- Vary the list of matters which the Strategic Planning Panel must have regard to when producing a Strategic Development Plan within regulations.

Policy Intention:

2.2 The regulations that establishes a Strategic Planning Area, a Strategic Planning Panel (SPP) and the Strategic Development Plan (SDP) for that area will set out:

- Details of the area including a map of the boundary;
- The name by which the SPP is to be known;
- The number of members on the SPP including the split of two thirds local planning authority members and one third nominated members from social economic and environmental organisations; and
- the functions of the SPP.

2.3 The regulations for SDP will follow the same approach as The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005. The SDP regulations would provide details of the form and content of the plan, and its

preparation. Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation is summarised below:

Topic Area	Description
Delivery Agreement including Community Involvement Scheme Timetable	The delivery agreement will comprise of two documents: the timetable and the community involvement scheme. The Strategic Planning Panel (responsible body) will have to agree a timetable for preparing the plan and the community involvement scheme detailing who and how stakeholders will be engaged and consulted during the process of the plan. The delivery agreement (including any revisions) will be agreed by the Welsh Ministers. The responsible body will be required to keep the delivery agreement up to date and issue a report following the statutory consultation stages.
Form and content of SDP	Regulations will set out what the SDP is to contain including its title, justification of policies and what area it covers. An SDP will need to include an end date and which once past, the plan will not have development plan status; the proposals map to show the proposals for development and use of land and additional matters for consideration in the form and content of the plan e.g. relevant transport plans.
SDP Procedures	This will set out the stages in preparation and adoption of an SDP. Stages will include preparation of an initial draft of the plan outlining the strategic sites and then another stage to consult on a fuller draft which will include all policies and allocations. The regulations will also prescribe the processes involved for each of these stages including the consultation process and the handling of representations made; procedures for submitting the sound plan to Welsh Ministers (i.e. Planning Inspectorate) to consider; the procedures for the independent examination and the publication of the binding recommendations made by the Inspector; procedures for the adoption of the plan following the Inspector's report; and procedures for the withdrawal of the SDP.
Intervention by the Welsh Ministers	This part of the proposed Regulations will deal with the procedure that the Welsh Ministers and the Strategic Planning Panel must follow when the Welsh Ministers decide to use their intervention powers – either to direct modifications or inform the responsible body not to adopt or call-in the SDP for the Welsh Ministers to approve the plan.
Annual Monitoring Reports	This is the process that the Strategic Planning Panel must follow in producing the Annual Monitoring Report which will monitor how effective the SDP policies have been in delivering the objectives of the SDP.
Availability of Documents	This section will ensure that the documents in relation to the SDP and any revision process are available for inspection.

Review of SDP	This section will set out when a full review of the SDP will commence (every 4 years) from the date of adoption and the process through which it is to be reviewed.
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2.4 These regulations will also be supported by guidance.

Relationship with other powers:

Existing powers

2.5 The proposed regulation powers for the Strategic Development Plans will broadly follow the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005. These regulations are currently being revised following the outcomes of the LDP refinement work and the SDP regulations will reflect the outcomes of this work.

3. Withdrawal of a Local Development Plan

Power: Part 2, Section 11

[66A Planning and Compulsory Purchase Act 2004]

Description:

3.1 These powers enable the Welsh Ministers to:

- Make provision about the giving of notices and directions under this section and the period of the notice period.

Policy Intention:

- 3.2 The policy intention is that a 6 week notice period should be given prior to a local planning authority withdrawing their Local Development Plan and all its supporting evidence. The form and content of the notice will require local planning authorities to provide the planning reason for the withdrawal of a plan and provide the links to the relevant evidence to justify the planning reason.
- 3.3 The Welsh Ministers will have powers to direct the local planning authority to provide further information and/or to extend the notice period. The regulations will therefore specify the form and content of the direction and the period which will include specifying the period to which the direction will apply.

Topic Area	Description
Notice period	The authority will be required to give a 6 week notice period prior to withdrawing its plan and supporting documents.
Withdrawal Notice	The withdrawal notice will be included in the regulations and will require local planning authorities to provide the planning reasons for the withdrawal of the plan.

3.4 These regulations will also be supported by guidance.

Relationship with other powers:

Proposed powers

3.5 This provision will also apply to Strategic Development Plans through section 5 of the Bill.

4. Welsh Ministers' power to direct preparation of joint Local Development Plan

Power: Part 2, Section 12

[72 Planning and Compulsory Purchase Act 2004 ("the 2004 Act")]

Description:

4.1 This makes provisions for the Welsh Ministers to make regulations in relation to:

- the specific circumstances when subsections (5) and (7) will not apply; these subsections set out the process that applies if an LPA withdraws from producing a Joint LDP such as suspending the independent examination; and
- what is a corresponding plan or corresponding joint Local Development Plan for the purposes of those subsections.

Policy Intention:

4.2 The purpose of section 72 of the 2004 Act is to ensure that any work carried out under joint working; or previous to the joint working; is not lost. The regulations will set out the circumstances where authorities may continue to adopt the plan covering their area following one or more of the authorities working on the joint plan not progressing their area.

Topic Area	Description
Setting conditions	These will outline the circumstances where local planning authorities will be able to adopt the relevant areas of plans following one or more of the authorities working on the joint plan not progressing their section.
Defining Corresponding plans or corresponding joint local development plans	These will enable the Welsh Ministers to state what plan will remain relevant to the specific local planning authority.

4.3 These regulations will also be supported by guidance.

Relationship with other powers:

Existing and Proposed powers

4.4 Provisions relating to the preparation of Joint Local Development Plans are contained in section 72 of the 2004 Act. Joint Planning Boards established under section 2 of the Town and Country Planning Act 1990 could be directed to produce Joint Local Development Plans with other local planning authorities or Joint Planning Boards.

5. Developments of National Significance

Power(s): Part 4, Sections 17, 18, 19, 20, 21, 22, 23, 24, 25, Schedule 3 and Schedule 4.

[Section 62D, 62E, 62F, 62G, 62H, 62I, 62J, 62K, 62N, 62O, 62P, 62Q, 62R, 75A, and Schedule 4D of the Town and Country Planning Act 1990]

Description:

5.1 These powers enable the Welsh Ministers to:

- Define in regulations what a Development of National Significance (DNS) is;
- Set out provisions about the way an application for a DNS is handled and considered within regulations and orders;
- Prescribe the form and content of an application for DNS;
- Set out in regulations which connected applications may be considered at the same time as an application for DNS;
- Prescribe the circumstances within which a Local Impact Report may be submitted and detail the matters that may be considered within it;
- Set out the functions which an appointed person exercises in place of the Welsh Ministers; and
- Make provision in relation to fees for DNS applications and connected consents.

Policy Intention:

5.2 It is the intention to introduce a new application process for the determination of DNS applications in Wales. The types of project that would be determined through the new process will be defined in regulations.

5.3 It is intended that a developer-led pre-application procedure forms part of the process and that the application will be administered by a person appointed by the Welsh Ministers, namely the Planning Inspectorate Wales. The way in which the application is processed and the timings for the submission of documents will be defined in statutory instruments, with procedure rules for considering the application made by the Welsh Ministers. Decisions on applications for DNS will be final.

- 5.4 It is expected that the process for administering and considering an application for DNS will follow a similar approach to the current procedures¹ for written representations, hearings and inquiries.
- 5.5 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation is summarised below:

Topic Area	Description
Thresholds and criteria for DNS applications [s.62D(3) and (6)]	<p>The proposed thresholds and criteria on the types of planning application to be categorised as DNS were issued for consultation as part of the Positive Planning Paper accompanying the Draft Planning (Wales) Bill issued in December 2013. The proposed thresholds and criteria for DNS mirror those introduced in England under the UK Government's Nationally Significant Infrastructure Projects (NSIPs) regime. This includes thresholds relating to the development of underground gas storage facilities, liquefied natural gas facilities, gas reception facilities, gas pipe-lines, airports, harbours, railways, rail-freight interchanges, dams and reservoirs, water resource transfer, waste water treatment, and hazardous waste facilities.</p> <p>Additional to the above developments, it is anticipated that onshore generating stations which produce between 25 and 50 megawatts will also be captured as a DNS project.</p> <p>Further work and consultation will inform the final thresholds so the final list may differ slightly from those examples described above.</p>
Notification of proposed application for DNS [s.62E(2) and (6)]	<p>The notification of a proposed application will be the first point of contact between the developer and the Welsh Ministers. It will allow for sufficient detail to be submitted for the Welsh Ministers to decide whether the application is a DNS and will contain required information.</p>

¹ The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003 SI 2003 No. 390 (W.52);
The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 SI No. 1271;
The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 SI No. 1266; and
The Town and Country Planning (Determination by Inspectors) (inquiries procedure) (Wales) Rules 2003, SI No. 1267.

	<p>Secondary legislation will prescribe the form and content of the notification. It is anticipated that the minimum information required will include a description of the proposed development, an outline of the site location, schematic drawings and a description of proposed environmental impacts of the development. The information required would not be of a scale sufficient for the purposes of consultation.</p> <p>It is not anticipated that timescales for which notification must be given will be prescribed as any step taken in relation to pre-application consultation will not be treated as such for the purposes of a DNS application.</p>
<p>Connected consents – Ability to prescribe procedure [s.62G(4)-(6)]</p>	<p>It is proposed that a developer would be able to apply for a number of secondary consents to the Welsh Ministers at the same time as an application for DNS.</p> <p>This section enables the Welsh Ministers to prescribe the procedure associated with those secondary consents. Namely, it allows the Welsh Ministers to disapply or apply enactments, with or without amendments, relating to the Town and Country Planning Act 1990 (“TCPA”) and the legislation in which the secondary consent is contained.</p> <p>It is anticipated that secondary consents will follow the same administrative and consultation procedures as the principal DNS application contained in the TCPA, so that it may be considered by the Welsh Ministers at the same time. However, the merits of the decision on the secondary consents will remain the same as provided for in the original legislation relating to that consent.</p>
<p>Secondary consents – List of consents [s.62H(1)]</p>	<p>A number of secondary consent types have been identified, which may be appropriate to supplement an application for DNS. This section allows for those consents to be prescribed in secondary legislation, subject to the conditions at subsection 62H(3).</p> <p>Those which are likely to be initially prescribed by regulations are:</p> <ul style="list-style-type: none"> • Control of works affecting scheduled monuments, grant of scheduled

	<p>monuments consent (Ancient Monuments and Archaeological Areas Act 1979 (s.2));</p> <ul style="list-style-type: none"> • Works on common land (Commons Act 2006 (s.38)); • Exchange of common land (Commons Act 2006 (s.16 and s.17)); • Restriction on placing rails, beams etc. over highway (consent) (Highways Act 1980 (s.178)); • Applications for hazardous substance consent; applications for consent without condition attached to previous consent and application to continue consent on change of control of land (Planning (Hazardous Substances) Act 1990 (s.4, s.13 and s.17)); • Control of demolition in conservation areas and authorisation of work, listed building consent Planning (Listed Buildings and Conservation Areas) Act 1990 (s.8 and 74); • Requirement for planning permission & grant of planning permission (Town and Country Planning Act 1990 (s.57 and s.58)); • CPO acquisition of land for development (Town and Country Planning Act 1990 (s.226)); • Stopping up or diversion of highway (Town and Country Planning Act 1990 (s.247)); • Highways crossing or entering route of proposed new highway, etc. (Town and Country Planning Act 1990 (s.248)); • Extinguishment of rights of way over land held for planning purposes (Town and Country Planning Act 1990 (s.251)); • Acquisition of land in connection with highways (Town and Country Planning Act 1990 (s.254)); and • Order-footpaths, bridleways or restricted byways affected by development (Town and Country Planning Act 1990 (s.257)). <p>Additional regulations may add, amend or remove a consent from this list.</p>
<p>Local Impact Reports – requirements [s.62(1)]</p>	<p>Once the Welsh Ministers have formally registered an application for DNS, the Welsh Ministers must invite the local planning authority within whose area the development</p>

	<p>is situated to submit a Local Impact Report (“LIR”).</p> <p>This section specifies that the Welsh Ministers must, by order, outline the steps required for the production of an LIR. Those steps are the issuing of a notice to the developer of the requirement of an LIR under s.62I and the deadline within which one must be submitted. It is anticipated that this will be set at within 4 weeks of notice.</p>
<p>Voluntary Local Impact Reports [s.62J(4)]</p>	<p>Other local planning authorities are not required to submit an LIR. However, where other authorities consider the proposal will impact on its area, they may submit a voluntary LIR. This section requires a development order to make provision the submission of voluntary LIRs by neighbouring authorities.</p> <p>The order will prescribe that the form and content of a voluntary LIR will be the same as that for a required LIR. Equally, it is anticipated that a voluntary LIR will be required within the same timescale (4 weeks).</p>
<p>Local Impact Reports – Form and content [s.62K(1)]</p>	<p>This section allows the form and content of an LIR to be prescribed.</p> <p>The LIR will be a document giving details of the likely positive/negative/neutral impact of the proposed development on the authority’s area. It is anticipated that local planning authorities must adhere to certain prescribed matters in respect of which they must describe potential impacts. They will also be required to provide a list of draft conditions and possible Section 106 requirements, should the Welsh Ministers or appointed persons choose to grant permission for the proposal and to mitigate negative impacts arising from the proposed development. The LIR is intended to be a factual assessment of impacts.</p> <p>It is open for the local planning authority to make representations to the Welsh Ministers or appointed persons separate from the Development of National Significance process, if it so chooses. This element will not be prescribed by order.</p> <p>It is not anticipated that there will be any requirement for the local planning authority to</p>

	consult with the public in compiling the Local Impact Report.
<p>Determination of procedure [s.62P(3) and (7)]</p>	<p>Section 62P enables the Welsh Ministers to select the method by which the DNS application is to be considered. This may be either through written representations, an inquiry, a hearing, or a combination of the three methods.</p> <p>It is envisaged that the prescribed period within which the procedure will be determined and relevant persons are informed will be 7 working days. This seeks parity with that for appeals.</p> <p>The Welsh Ministers will be under a duty to inform representative persons as they consider appropriate, the applicant and the local planning authority of the appeal method. It is envisaged that statutory consultees will be prescribed in regulations as representative persons.</p> <p>The selection of procedure is to be based on published criteria. A set of draft criteria for the determination of procedure for appeals and call-ins is subject to public consultation at present. It is envisaged that similar criteria will be used.</p>
<p>Provision of how an application to the Welsh Ministers is dealt with [s.62Q(1)-(2) and section 75A inserted by paragraph 7 of Sch.4]</p>	<p>These sections enable the Welsh Ministers to prescribe in subordinate legislation the process and requirements for the making and determination of applications made directly to them, including 'connected applications'.</p> <p>For DNS, the post-submission process is likely to closely follow existing processes and requirements for appeals and call-ins. The total length of the process, from submission to determination, is unlikely to take longer than 36 weeks. This is to provide as much familiarity as possible to the applicant and other stakeholders, including local planning authorities and consultees.</p> <p>In order to achieve as similar a process as possible, these sections enable provisions within existing planning legislation to be applied, with or without modification to applications made directly to them, including any connected applications.</p>

	<p>They also enable the Welsh Ministers to make provisions where the process and requirements need to depart from the existing processes etc. This is because arrangements need to reflect that the applications are being processed and determined by the Welsh Ministers instead of the LPA, and that the scope of existing powers in some instances do not exist or extend to prescribe certain aspects of this application process. For example:</p> <ul style="list-style-type: none"> • Establishing the consultation arrangements with the local planning authority within whose area the DNS is located; • Establishing the notification arrangements with the local planning authority within whose area the DNS is located and for them to record details of the application on the planning register that they maintain; • Making provisions to limit the ability of applicants to make substantial changes to the development after the application has been submitted to ensure that the application can be determined, and for a maximum of one amendment to be made to the scheme, within the prescribed determination period.
<p>Functions exercised by appointed persons [Sch.3(paragraph 1)]</p>	<p>The Schedule will set out the circumstances in which functions are exercised by the appointed persons in relation to applications for DNS made to the Welsh Ministers. It allows for specified functions exercised by the appointed person (the Planning Inspectorate Wales) to be prescribed in regulations.</p> <p>It is anticipated that the Planning Inspectorate will exercise all functions (such as the receipt of notifications, applications and responses as well as their consideration) in relation to DNS applications with the exception of the final determination of the application.</p>
<p>Fees [Sch.4(paragraph 18)]</p>	<p>The application fees will be set out in regulations. It is anticipated that fees for DNS applications will be paid in instalments and will be calculated on Inspector time spent on the application. The planning application fees will also be used to cover the cost of processing the application, payment for Independent Inspectors and for venues and</p>

	<p>logistics should hearings be required. The fees will also cover the exercise by the Welsh Ministers of functions in relation to connected consents. A portion of the fee will be paid to the local planning authority for producing an LIR.</p> <p>The fees provisions are intended to mirror those which are in place for the determination of Nationally Significant Infrastructure Projects under the Planning Act 2008.</p> <p>Subsequent consents, such as the variation of conditions and non/minor material amendments, will be charged for separately at the point of submission by local planning authorities, in line with the national fee schedule.</p>
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5.6 The above policy intent is to be supplemented by guidance.

Relationship with other powers:

5.7 The above described powers for the DNS process will be conferred upon the Welsh Ministers by amendments to the Town and Country Planning Act 1990. These powers will, in the main, be exercised through free-standing subordinate legislation relating solely to DNS. Provisions made in regulations and orders for DNS will be closely linked to those for optional direct applications and procedures for the consideration of DNS applications will be based on the procedure rules for appeals and references to the Welsh Ministers.

5.8 It is the intention that both types of applications are considered in a similar way (see section 7 below).

Existing powers

5.9 Procedural matters relating to pre-application procedures, the handling of a DNS application and provisions relating to the form and content of Local Impact Reports will be enabled through a new procedure order. This is to be based on the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, SI No. 801.

- 5.10 Fees for DNS applications will be contained within new and separate regulations. These are to be similar in form to the Infrastructure Planning (Fees) Regulations 2010 SI No. 106
- 5.11 The procedure rules for the consideration of DNS applications will be based on the current rules for planning appeals and call-ins, subject to modifications. Those are:
- The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003 SI 2003 No. 390 (W.52);
 - The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 SI No. 1271;
 - The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 SI No. 1266; and
 - The Town and Country Planning (Determination by Inspectors) (inquiries procedure) (Wales) Rules 2003, SI No. 1267.
- 5.12 All of the above statutory instruments are to be reviewed informed by the refinement work on the development management and appeals systems. It is likely that any proposed amendments would also apply to DNS applications.

Proposed powers

- 5.13 Section 15 of the Bill introduces a requirement on applicants to carry out pre-application consultation with the community and technical consultees where they intend to apply for planning permission for development of a type specified in an order made by the Welsh Ministers. Details about this provision and how the Welsh Government propose to apply it are contained in the 'Frontloading the development management system' consultation paper issued in October. Applicants for DNS will have to comply with this requirement.
- 5.14 Section 16 of the Bill gives Welsh Ministers the power to make regulations about the provision of pre-application services by local planning authorities or the Welsh Ministers. 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. They also require local planning authorities and the Welsh Ministers to retain records of pre-application services, and to publish information on the type of pre-application services provided. The introduction of a pre-application service to be provided by the Welsh Ministers for DNS applicants will form part of the consultation exercise on the 'Frontloading the development management system'.

6. Applications to Welsh Ministers: Option to make an application to the Welsh Minister

Power: Part 4, Sections 20, 21, 22, 23, 24, 25 and Schedules 3, 4

[Sections 62L, 62M, 62N, 62O, 62P 62Q, 62R, 75A and Schedule 4D to be inserted into the Town and Country Planning Act 1990]

Description:

6.1 Section 20 of the Bill enables the Welsh Ministers to:

- Designate a local planning authority (LPA) on the basis of its underperformance and to revoke the designation at any time.
- Publish the criteria to be applied in designating an LPA and in revoking the designation.
- Provide developers with the option of submitting an application for planning permission, or an application for the approval of reserved matters ('qualifying' applications), direct to the Welsh Minister for determination, where the LPA has been designated.
- Provide developers with the option of submitting a 'connected' application direct to the Welsh Ministers for determination, but only if it is connected to the 'qualifying' application and where the LPA has been designated.
- Prescribe in regulations the types of development to which the option to make a direct application to the Welsh Ministers applies, and the types of 'connected' applications that may also be made directly to them.
- Make provisions in a development order about the referral of a 'connected' application to the authority to which it would normally have been made for determination, where the Welsh Ministers consider that it is not connected with the principal application, or should not be determined by them.

6.2 The remaining sections and schedules clarify that:

- A decision of the Welsh Ministers on an application made directly to them will be final.
- The Welsh Ministers must notify a community council where the application relates to land in the community council's area and where they have previously asked their local planning authority to be notified of applications submitted to that authority.
- Unless the Welsh Ministers direct otherwise, an appointed person will determine the applications, (likely to be from the Planning Inspectorate Wales). The functions of the appointed person are set out in Schedule 3 to the Bill.

6.3 The remaining sections and schedules also provide powers that enable the Welsh Ministers to establish the process and requirements for the making and determination of direct applications, including 'connected applications'. They enable the Welsh Ministers to:

- Determine the procedures by which the application is to be considered and to publish the criteria to be applied in making this decision. The period in which this decision is to be made is to be prescribed in regulations.
- Make provisions in a development order, about the way in which such applications are to be dealt with, including the consultation to be undertaken by the Welsh Ministers on direct applications and the ability to make post-submission amendments to them.
- Apply with or without modification (by means of a development order), any provisions or requirements imposed by existing planning legislation to these applications.
- Direct an LPA or hazardous substances authority to undertake certain actions or functions in relation to an application made direct to the Welsh Ministers that would otherwise have been undertaken by that authority.

Policy Intention:

6.4 Together these powers provide the Welsh Ministers with the ability to take direct action when there are clear and persistent failures in an LPA performance. Where an LPA is deemed to be poorly performing and has been designated by the Welsh Ministers for that purpose, applicants will then have the option to make a planning application for major development direct

to the Welsh Ministers for determination, rather than to the LPA. The designation will be revoked when the Welsh Ministers are satisfied that the underperforming LPA has taken significant steps to improve its performance.

- 6.5 The provision will ensure LPAs focus on improving their performance, encouraging efficient working in respect of their development management and other planning functions. It will also provide developers with an alternative service to enable their applications to be processed and determined in a correct and timely manner. This can assist in re-building confidence in the planning system, which in turn may lead to increased investment and economic growth in the designated LPA area.
- 6.6 Where an LPA has been designated, the Welsh Government’s Planning Advisory and Improvement Service will assist the authority in accessing the support it needs in order to address the performance issues as quickly as possible.
- 6.7 Certain aspects of this provision are to be provided in subordinate legislation (by regulations and development order), which will essentially prescribe the process and requirements for making and determining such applications. It is anticipated that they should mirror, as far as possible, the process and requirements that usually apply when an application is submitted to the LPA, which are primarily set out in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the DMPWO 2012”). The Welsh Ministers will also publish criteria associated with the designation or de-designation of an LPA, and the criteria to be applied in the determination of the procedures by which the application is to be determined, (i.e. by way of a local inquiry, a hearing or written representations, or a combination of the three methods).
- 6.8 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation and designation criteria are summarised below:

Detail	Policy Intention
Development types [s.62I(3)]	<p>It is anticipated that the type of development to which the option to make direct applications applies will be limited to major development, as these types of proposals drive economic growth and have the greatest bearing upon communities.</p> <p>The definition of major development is likely to be similar to that contained in article 2(1) of the DMPWO 2012, which formed part of the hierarchy of development consulted upon in the Positive Planning consultation paper issued in December 2013 and includes:</p>

	<ul style="list-style-type: none"> - houses of 10 or more units or site areas 0.5ha or more; - buildings with proposed floor space of 1,000 sq metres or more; - development on a site of 1 hectare or more.
<p>Qualifying applications [s.62L(5)]</p>	<p>The Bill specifies that a ‘qualifying application’ includes full, outline and reserved matters applications.</p> <p>It excludes the ability for applications that fall within Section 73 of the TCPA 1990 (applications to vary or remove conditions) to be treated as a ‘qualifying application’, unless specified otherwise in regulations.</p> <p>Applications to renew planning permission for major development deal with the principle of development. It is therefore proposed through regulations that renewal applications are to be considered as a ‘qualifying application’.</p> <p>Other types of applications that fall within Section 73 of the TCPA 1990, such as to vary or remove other conditions and in making material amendments to planning permissions, will continue to be submitted to the LPA for determination.</p>
<p>Criteria to be applied in deciding to designate an LPA or to revoke the designation. [s.62L(8)]</p>	<p>The criteria to be applied in assessing and determining whether an LPA is underperforming, and should therefore be designated by the Welsh Ministers for that purpose, is likely to be drawn from the indicators contained in the proposed performance framework that establishes what constitutes a good LPA, which was set out in the Positive Planning consultation paper.</p> <p>They are likely to focus on the LPA’s performance in terms of efficiency and quality of determining planning applications, which could be assessed on the speed within which applications for major development are determined, and the extent to which such decisions are overturned at appeal.</p> <p>The criteria to be applied in assessing and determining whether or not to revoke the designation could include the consideration of:</p>

	<ul style="list-style-type: none"> - the capacity of the designated LPA to deal effectively with applications for major development in the future; - the effectiveness of the designated LPA in dealing with those major applications that were submitted to them during the period of designation; - the degree of improvement against areas of weakness identified in the initial performance assessment; and, - the designated LPA's performance administering applications that are submitted direct to the Welsh Ministers for determination, e.g. their performance as a consultee on such applications, and in undertaking any actions required by the Welsh Ministers to assist them in the processing and consideration of such applications .
<p>'Connected' applications [s.62M(3)]</p>	<p>It is proposed that a developer will be able to submit a 'connected' application direct to the Welsh Ministers at the same time as the qualifying application is made.</p> <p>'Connected' applications for example could be for the approval of infrastructure where it is needed to support an application made direct to the Welsh Ministers for new housing.</p> <p>The types of connected applications are likely to include full, outline, reserved matters and renewal applications, in addition to applications for listed building, conservation area and hazardous substances consents.</p> <p>These types of applications are considered to represent the most common types of applications and consents that often run concurrently with planning applications for major development. It also provides developers with the ability for 'connected' applications to be determined by a single authority.</p>
<p>'Connected' applications – Referral to the local planning authority or hazardous substances authority. [s.62M(7)]</p>	<p>Where the Welsh Ministers consider that the application is not connected with the principal application, or should not be determined by them, provision is made that enables the Welsh Ministers to refer the connected application to the authority that would have normally determined it.</p>

	<p>The provision enables the Welsh Ministers in a development order to set out the referral process, including prescribing what constitutes a referral of an application to formally trigger the authority to process and determine the application. It is also likely to set out the form and manner in which the formal referral is to be made to the authority and the information to be included. It may also include the process for notifying the applicant of the Welsh Ministers' intentions to refer the application to the normal determining authority.</p>
<p>Determination of procedure [s.62P(3) and (7)]</p>	<p>The Bill enables the Welsh Ministers to select the method which an application made direct to them under this measure is to be considered. This may be either through written representations, an inquiry, a hearing, or a combination of the three methods.</p> <p>It is envisaged that the period in which the procedure will be determined is to be prescribed within 7 working days of receipt of a valid application. This seeks parity with that for appeals.</p> <p>The Welsh Ministers are under a duty to inform the applicant, LPA and representative persons as they consider appropriate of the determination method. It is envisaged that statutory consultees will be prescribed as representative persons in regulation.</p> <p>The procedure will be selected based on published criteria. A set of published criteria for the determination of procedure for appeals and call-ins is subject to public consultation at present. It is envisaged that similar criteria would be used for direct applications.</p>
<p>The process and requirements for the making and determination of optional direct applications to the Welsh Ministers. [s.62Q(1) and s.75A(1)]</p>	<p>The Bill enables the Welsh Ministers to prescribe in a development order the process and requirements for the making and determination of applications made directly to them, including any 'connected' applications. It is likely that they will mirror, as far as possible, the process and requirements that usually apply when an application is submitted to an LPA. This is to provide consistency to the applicant</p>

and other stakeholders, including the local community and statutory consultees.

Aspects that are likely to closely reflect the existing planning application process and requirements, as set out in legislation (in particular in the DMPWO 2012), include:

- The requirements associated with the making of a valid application, such as the form and manner in which it is to be made, the information and fee to accompany the application and the certificates and notification requirements to be completed by the applicant.
- The publicity and consultation requirements.
- The requirement that applications must be determined in accordance with the local development plan unless material considerations indicate otherwise.
- The time period for determination.

The Bill enables enactments or requirements in existing planning legislation to be applied, with or without modification to applications made directly to them, including any connected applications, in order to achieve this.

It also enables the Welsh Ministers to make provisions where the process and requirements need to depart from the existing planning application process. This is to reflect the fact that Welsh Ministers will be processing and determining applications instead of the LPA, and that the scope of existing powers in some instances do not exist or extend to prescribe certain aspects of this application process. For example the need to:

- Establish the consultation arrangements with the designated LPA where an application has been submitted to the Welsh Ministers for determination.
- Establish the notification arrangements with the designated LPA where an application has been submitted to the Welsh Ministers.
- Make provisions to limit the ability of applicants to make substantial changes to the development after the application has been submitted, so that it is determined within the prescribed period.

	<p>If applications for hazardous substances, listed building or conservation area consents are to be classified as connected applications, the processes and requirements for their determination by the Welsh Ministers are also likely to mirror, as far as possible, the existing processes and requirements associated with these consents. These are set out in The Planning (Hazardous Substances) Regulations 1992 and The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012.</p>
<p>Fees [Sch.4(18)]</p>	<p>The Bill enables the Welsh Ministers to make provisions in regulations for the charging and the setting of fees for applications made direct to them.</p> <p>Regulations will be made to establish the application fees to be paid by applicants to the Welsh Minister for the processing and determination of their applications. These are likely to reflect the existing application fees received by LPAs, which are currently set out in the Town and Country Planning (Fees for Applications and Deemed Applications) Regulation 1989 and the Planning (Hazardous Substances) Regulations 1992.</p>

6.9 The above policy intent is to be supplemented by guidance.

Relationship with other powers:

Existing powers

6.10 The powers described above for optional direct applications and connected applications will be exercised through a combination of new and existing legislation.

6.11 It is anticipated that the procedural matters associated with the handling of applications made under Part 4 of the Bill will be set out in new regulations and a development order.

- 6.12 Fees for optional direct applications to Welsh Ministers will be provided for by amendment to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI No. 193.
- 6.13 The procedure rules for the consideration of optional direct applications will be based on the current rules for planning appeals and call-ins, subject to modifications. Those are:
- The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003 SI 2003 No. 390 (W.52);
 - The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 SI No. 1271;
 - The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 SI No. 1266; and
 - The Town and Country Planning (Determination by Inspectors) (inquiries procedure) (Wales) Rules 2003, SI No. 1267.
- 6.14 The above statutory instruments are currently being reviewed following the outcome of refinement work to the development management and appeals systems.
- 6.15 The classification of applications for hazardous substances, listed building and conservation area consents as connected applications will require amendments to the following legislation to establish the process for their determination by the Welsh Ministers:
- The Planning (Hazardous Substances) Regulations 1992, SI No. 656; and
 - The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012, SI No. 793.

Proposed powers – Pre-application Consultation

- 6.16 Section 15 of the Bill introduces a requirement on applicants to carry out pre-application consultation with the community and technical consultees where they intend to apply for planning permission for a development type specified in an order made by the Welsh Ministers. Details about this provision and how the Welsh Government propose to apply it are contained in the 'Frontloading the Development Management System' consultation paper issued in October.
- 6.17 The consultation paper identifies that the requirement will only apply to major development proposals that will result in planning applications for full or outline permission. Therefore, applicants submitting applications for major development

directly to the Welsh Ministers for determination, where the LPA has been designated due to its underperformance, will have to comply with this requirement.

Proposed powers – Pre-application Service

- 6.18 Section 16 of the Bill gives Welsh Ministers the power to make regulations about the provision of pre-application services by local planning authorities or the Welsh Ministers. 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. They also require local planning authorities and the Welsh Ministers to retain records of pre-application services, and to publish information on the type of pre-application services provided.
- 6.19 Details about the introduction of a statutory requirement for LPAs to provide pre-application service to applicants are also contained in the 'Frontloading the Development Management System' consultation paper issued in October. The introduction of a pre-application service to be provided by the Welsh Ministers for optional direct applicants will form part of a separate consultation exercise on the wider introduction of these provisions.

7. Decision Notices and Notification of Development: Decision Notices

Power: Part 5, Section 31

Description:

7.1 This power provides:

- That decision notices must specify the plans and documents in accordance with which a development is to be carried out.
- Where plans or documents are specified in a decision notice, the permission shall be deemed to be granted subject to a condition that the development must be carried out in accordance with them.
- The LPA must provide a revised decision notice where a condition or limitation subject to which the planning permission was granted is approved, removed or altered.

7.2 The power enables the Welsh Ministers to prescribe through a development order:

- The form of decision notices.
- The manner in which decision notices are to be given.
- Particulars to be contained in decision notices.
- The persons who shall be provided with a decision notice once it has been revised.
- The details included within a revised decision notice.

Policy Intention

7.3 The policy intention is to provide stakeholders with the ability to clearly identify which plans and documents form a planning permission.

- 7.4 The requirement to issue revised decision notices will make it easier for stakeholders to identify, at any stage in the development process, the “updated” planning permission that takes account, for example, of amendments to approved plans and the discharge, revocation and amendment of conditions. This will increase transparency in the planning system and help stakeholders to determine if development has been built in conformity with the planning permission.
- 7.5 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation are summarised below:

Detail	Policy Intention
The form of decision notices	S. 31 provides the power to prescribe a standard form for decision notices in a development order. Stakeholders views, through consultation, will be sought on the scope and structure of any standard form.
The manner in which decision notices are given	Decision notices would be sent out in writing by the LPA. This will be by letter and/or e-mail.
What will decision notices contain?	The decision notice will need to list the approved plans and documents as well as all the existing information required by article 24 of the DMPWO 2012, such as the reason for including any planning conditions It is not anticipated that any additional information will need to be included in decision notices but this will be explored with stakeholders through consultation.
Who will be provided with a revised decision notice?	The applicant will be provided with a revised decision notice. However, where the notice has been revised there may be other interested parties such as neighbouring land owners/occupiers or statutory consultees who would benefit from receiving a copy of the revised notice. We will seek the views of stakeholders, through consultation, on this issue.
What will the revised decision notice include?	It is expected that the revised decision notice will be an annotated version of the original decision notice, reflecting any changes to the planning permission. It will need to state the date of any changes. It is envisaged that in most cases the need to issue the revised decision notice will be triggered by the discharge of planning conditions. In such cases the revised decision notice would simply indicate that the condition has been discharged on a specific date.

7.6 The development order will also be supported by guidance.

Relationship with other powers:

Existing powers

7.7 These provisions will apply to section 90 (development with government authorisation) and s102 (orders requiring discontinuance of use or alteration or removal of buildings or works) of the TCPA where notices of decisions made have been issued.

8. Decision Notices and Notification of Development: Notification of Development

Power: Part 5, Section 32

Description:

8.1 This power provides:

- That before beginning a development for which planning permission has been granted, a person must give notice to the local planning authority of the date on which the development is to begin.
- A notice of the decision to grant planning permission must be displayed at or near the place where the development is being carried out for the duration of the development.
- Planning permission is deemed to be granted subject to a condition that notification duties are complied with.

8.2 The power enables the Welsh Ministers to prescribe in a development order:

- That the notification notice must contain details of the planning permission and any other matters specified in the order.
- The form that the notification notice is to take.
- The form of the notice displayed on site and that it must be displayed in accordance with details in the order.

Policy Intention:

8.3 To ensure that developers notify local planning authorities of the start date of certain developments (expected to be major developments and developments of national significance) and to ensure that the developer displays a copy of the relevant planning permission on site for the duration of the development.

8.4 The aim of the legislation is to allow stakeholders to view a copy of the planning permission on the development site, making it easier to check if the development has been built in conformity with the terms of the permission.

- 8.5 The requirements will also assist in monitoring development by helping to establish whether all necessary conditions have been discharged prior to development commencing and providing clarity in relation to the permission being implemented, in particular where a single development has multiple permissions or where amendments have occurred.
- 8.6 Welsh Ministers will be able to prescribe through a development order the form and content of the notice as well as how the notice is to be displayed. Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation and designation criteria are summarised below:

Detail	Policy Intention
Details contained within the notification of the commencement of development	S32 states that this notice will contain details of the date on which the developer intends to commence development. This will allow the LPA to check that all relevant pre-commencement conditions have been discharged and assist monitoring of the development. The intention is that a development order will require that, when a site benefits from more than one permission, the notice identifies which permission is being implemented. It is expected that S. 32 will only apply to major developments and developments of national significance.
The form of notification	Welsh Ministers will be able to prescribe how LPAs are to be notified of the start of development. This could be written notification by letter or e-mail. Another option for notification would be via a standard pro forma. A consistent approach to notification will inform LPAs and the community of the planning permission that is being implemented on site – providing greater clarity and transparency.
The form of the notice displayed on site and what it will contain	The notice must be displayed at, or near, the development site. It must remain in place for the duration of the works. The notice will need to contain the date on which development is to start and details of the planning permission. The intention is that the site notice would be updated as development progresses to reflect, for example, the discharge of conditions on the planning permission. S. 32 prescribes that the site notice must be in a form specified in a development order. This could be a standard template. It is likely that the development order will require the site notice to be displayed so it can be clearly read, protected from the elements, and clearly visible to members of the public.

8.7 The development order will also be supported by guidance.

Relationship with other powers:

Proposed powers

8.8 S31 relates to the form and content of decision notices. In respect of S32 developers will have to ensure that they display, on site, the decision notice for the relevant planning permission.

9. Failure to Comply with Validation Requirement: Notice and Appeal

Power: Part 5, Section 28

Description:

9.1 This power provides that:

- Local planning authorities must give an applicant notice where they consider the application does not comply with a validation requirement imposed through the DMPWO 2012 under section 62 of the Town and Country Planning Act 1990 (TCPA).
- Applicants can appeal to Welsh Ministers where such a notice has been served – the appeal may be made on several grounds.
- Appeals must be determined by written representations.
- Welsh Ministers must either dismiss the appeal, or, quash or vary the notice. The Welsh Ministers' decision on the appeal is final.

9.2 It also enables Welsh Ministers to:

- Make provision about what information is to be included in the notice, and how the notice is to be given.
- Require the appeal to be determined by a person appointed by the Welsh Ministers unless the Welsh Ministers direct otherwise.
- Prescribe how the appeal is to be made.

Policy Intention

- 9.3 To quickly resolve disputes over whether an application is valid by introducing an appeal process. Introducing an appeal process aims to encourage LPAs to fully consider whether the information they request in order to validate a planning application is necessary. The appeal mechanism will also allow LPAs and applicants to establish what comprises a reasonable request in respect of the content or quality of information submitted.
- 9.4 Evidence suggests that some LPAs fail to validate applications that would appear to contain all the necessary information. LPAs also report that many applications are of a poor standard, lacking sufficient information and detail to allow validation.
- 9.5 Currently, where an LPA decide an application is invalid the applicant has no recourse to appeal. This causes delay in the application process and often means that applicants must comply with LPA requirements in order to have their application considered, even if the requirements are disproportionate or unreasonable.
- 9.6 It is considered that the existence of the appeal mechanism will result in fewer cases of non validation as LPAs make more carefully considered requests for information to validate an application and the quality of information submitted by applicants increases.
- 9.7 It is envisaged that the new appeal process will be similar to Section 78 of the TCPA, which provides the right to appeal against planning application decisions and failure to take such decisions. Section 78 of the TCPA also allows for the details of the appeal procedure to be set out in a Development Order made by the Welsh Ministers.
- 9.8 The appeal process itself will consist of a quick desktop exercise undertaken by the Planning Inspectorate. Where a notice of non validation is received by an applicant, they will have 14 days to appeal. The notice will form the basis of the LPA's representation and appellants will be able to make written representations to the Inspectorate. The Planning Inspectorate will only consider the matters before them, they will not consider the validity of the wider application or reasonableness of the LPAs local list of requirements. Therefore the appeal determination should take no more than 3 weeks from start to finish.
- 9.9 The Development Order will provide details of what information should be provided by the LPA in the notice of non-validation and the appeal process. The appeal is to be determined by a person appointed by Welsh Ministers, i.e. The Planning Inspectorate.

Detail	Policy Intention
Information to be included within the notice	<p>The aim is to ensure that local planning authority officers fully consider whether the information they are asking of an applicant is required to validate an application under S62.</p> <p>The intention is that the notice of non-validation issued by the local planning authority will include:</p> <ul style="list-style-type: none"> i) the validation requirement and ii) the LPAs reasons for considering that the applicant does not comply with the requirement. <p>The notice may also include: the name of the applicant; the application reference number and description of development; the date by which the appeal must be made and how to make the appeal.</p> <p>The notice is likely to be sent to the applicant/agent by e-mail or letter.</p>
Making of an appeal	<p>Since the process aims to provide a swift resolution to disputes, the development order will specify the time frame within which the appeal shall be made. This is currently anticipated to be 14 days from the date of service of the notice.</p> <p>The development order will also specify how the appellant should make the appeal and what information they should provide in order to make the appeal. It is likely this information will consist of: the notice provided by the LPA; a copy of the application as provided to the LPA; identification of the grounds of appeal, and, contact details of the applicant.</p> <p>If the appeal is successful it does not automatically mean that the application is valid, only that the information requested in the LPAs non-validation notice is not required to validate the planning application.</p>
Person appointed to determine the appeal	<p>Currently Welsh Ministers appoint the Planning Inspectorate to determine appeals. It is intended that the Planning Inspectorate will also be responsible for determining appeals against non-validation.</p> <p>It is intended that non-validation appeals will be more administrative in nature than other existing appeals and they will have a limited scope, as with enforcement appeals. There will be no site visits associated with the appeals as there currently are with the majority of existing appeals. The Planning inspectorate will therefore be able to allocate resources in order to deal with these appeals by the most efficient and effective means.</p>

9.10 The development order will also be supported by guidance.

Relationship with other powers:

Existing powers

- 9.11 Section 28 of the Bill will allow appeals in respect of requirements made under Section 62 of the TCPA. These requirements are identified in articles 5 (Applications for Planning Permission) and 8 (General Provisions relating to applications) of the DMPWO 2012.
- 9.12 Article 22(3) of the DMPWO 2012 defines what is meant by a “valid” application. When a valid application is received by the LPA, article 22(1) provides that it must be determined within a prescribed period.

10. Enforcement: Appeals against Notice in Respect of Land Adversely Affecting Amenity

Power: Part 6, Section 43

Description:

10.1 These powers enable the Welsh Ministers to:

- Specify in regulations the steps to be taken in connection with bringing an appeal such as who to notify and how this should be done
- Prescribe what information an appellant and other parties involved in the appeal procedures need to provide
- Provide in regulations the circumstances when the different appeal procedures are to be used such as by written representations or hearing

Policy Intention

10.2 The changes proposed to the planning enforcement system in Wales aim to make it more effective and efficient whilst preventing delay. The proposed changes are intended to prevent those who know how to abuse the current system from doing so, whilst enhancing the tools that LPAs have available to them to achieve acceptable forms of development.

10.3 S43 transfers the responsibility for dealing with appeals against a notice in respect of land adversely affecting amenity from the Magistrate's court to the Welsh Ministers. The aim of this provision is to make the appeal procedure more consistent with other enforcement appeals and transfer responsibility to a body which is used to making determinations based on amenity and is therefore in a better position to hear such appeals and achieve more effective outcomes.

10.4 While enforcement legislation is mainly contained within primary legislation, S43 allows the Welsh Ministers to make regulations in respect of this appeal mechanism. The details of this are set out below.

Detail	Policy Intention
Appeal against notice in respect of land adversely affecting amenity to be heard by Welsh Ministers	<p>S43 makes Welsh Ministers responsible for determining an appeal against an untidy land notice (S215 of the 1990 Act).</p> <p>The intention is to align the appeal procedure under S217 with that of other enforcement appeals detailed under the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003 and Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003.</p>
Steps involved in making an appeal	<p>The existing procedure for making an enforcement appeal involves the appellant completing an application form, identifying the ground of appeal and setting out the facts which they consider support those grounds.</p> <p>The grounds of appeal are currently set out under S217 of the TCPA and are not proposed to change. It is envisaged that regulations will require an appeal to be made in a way that mirrors the existing enforcement notice appeal procedure.</p> <p>Similarly, as with the procedure for enforcement notices, it is likely that after the appellant submits the appeal to the Welsh Ministers, notification of its receipt is served by the Welsh Ministers on the LPA. However, the legislation could also potentially require that the appellant serve notice on neighbours to the site or erect a site notice to inform those affected by the condition of the land that an appeal has been submitted.</p>
Information to be provided in connection with an appeal	<p>The enforcement notice appeal procedures require that LPAs submit a copy of the notice to Welsh Ministers as well as a statement explaining their grounds for serving the notice. This is intended to be the case in respect of S217 appeals.</p> <p>Appellants are able to make a second set of representations within the appeal process. This is also expected to be mirrored in the appeal procedure described in the regulations for an appeal against a S215 notice.</p> <p>S42 allows the Welsh Ministers to make further requirements if necessary. For example, they</p>

	<p>may require photographs of the condition of the site from both parties or invite third party representations</p>
<p>The procedure by which an appeal is to be considered</p>	<p>It is envisaged that appeals against S215 notices will be able to be heard via written representation, although circumstances may exist where Welsh Ministers consider a hearing or inquiry is necessary. Welsh Ministers are likely to want to carry out a site visit to assess the condition of the site themselves. Magistrates do not currently carry out such visits. Regulations could detail the circumstances under which each type of appeal would be relevant.</p>

10.5 The regulations will also be supported by guidance.

Relationship with other powers

Existing Powers

10.6 S43 amends S217 of the 1990 Act, making the Welsh Ministers responsible for hearing appeals against the service of a S215 notice in respect of land adversely affecting amenity. The regulations made under the amended S217 would align with that of other enforcement appeals detailed under the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003 and Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003.

11. Enforcement, Appeals Etc.: Costs on applications, appeals and references

Power(s): Part 6, Sections 44, 46 and Schedule 5

[322C of the Town and Country Planning Act 1990]

Description:

11.1 These powers:

- consolidate existing costs provisions currently contained in other enactments;
- Allow for the entire administrative cost incurred in connection with a particular procedure to be claimed; and
- Enable the Welsh Ministers to prescribe a standard daily amount for cases involving an inquiry or hearing or cases considered on the basis of representations in writing by regulations.

Policy Intention:

11.2 Public inquiries and hearings in respect of applications, appeals or references to the Welsh Ministers (“call-ins”) are administered by the Planning Inspectorate Wales (“PINS”) and chaired by an independent planning inspector who also provides a report on the outcome of the examination. At present, costs may only be claimed by either the applicant/appellant or the local planning authority.

11.3 The policy intention is to ensure a more flexible costs regime, enabling the Welsh Ministers and other parties to an appeal/application to recover their own costs. PINS may recover costs for the examination of an appeal or application,

including their administrative costs and costs where an oral hearing or inquiry does not take place. This may be in accordance with charges set out in regulations.

11.4 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation are summarised below:

Topic Area	Description
Standard daily rate per day for a hearing or inquiry.	<p>To allow the Welsh Ministers to prescribe standard rates to recover the entire administrative costs of the Welsh Ministers. Those costs are to include:</p> <ul style="list-style-type: none"> • A standard daily rate for those persons engaged in the case; • Expenses incurred, including travelling, accommodation and subsistence; • Legal costs or disbursements incurred by the Welsh Ministers; and • Other relevant costs. <p>Those standard amounts are to be the subject of further research by the Welsh Government and Planning Inspectorate and will be subject to public consultation.</p>

Relationship with other powers:

Existing powers

11.5 The above described powers for costs on applications, appeals and references will be prescribed as new regulations.

11.6 Current regulations provide for the application of daily rates, see the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011: SI No 2415. This prescribes amounts for the examination of local development plans. It is envisaged that new regulations will mirror those provisions contained there, subject to modifications.

12. Enforcement, Appeals Etc.: Procedure for certain proceedings

Power(s): Part 6, Section 45 and Schedule 5.

[Section 323A of the Town and Country Planning Act 1990]

Description:

12.1 These powers enable Welsh Ministers to:

- Prescribe the procedure to be followed in connection with an inquiry or hearing by regulations;
- Prescribe the procedure to be followed in connection with proceedings on an application, appeal or reference that is to be considered by or on behalf of the Welsh Ministers on the basis of representations in writing, by regulations; and
- Provide that, in prescribed circumstances a matter may not be raised in proceedings on an appeal made to the Welsh Ministers unless it has been previously raised before a prescribed time or it is shown that it could not have been raised before that time, by regulations.

Policy Intention:

12.2 Public inquiries and hearings in respect of appeals or call-ins are administered by PINS and are chaired by an independent planning inspector, in line with procedure rules. An appeal or call-in must follow one of the following procedures:

- Written representations;
- Public hearing; or
- Public inquiry.

12.3 At present, the procedure rules for hearings and inquiries are made by the Lord Chancellor, whereas rules for proceedings following the written representations format are made by the Welsh Ministers. Where an appeal or call-in is subject to complexity in one subject area, an Inspector may elect that the entire case follows an oral procedure. New matters may also be raised during an appeal, which can potentially add time and delay to a decision being made.

- 12.4 It is the policy intention that one set of procedure rules is made in place of the current four sets of rules (at Paragraph 12.11). It is the intention that the single set of procedure rules will give the Welsh Ministers flexibility to use multiple approaches (the three aforementioned procedures) when examining an appeal or call-in. For example, an appeal may be considered by written representations; however, a particularly complex subject area may require evidence to be given orally. This enables the process to be more flexible and efficient.
- 12.6 The procedures for written representations, public inquiries and public hearings require amendment to reflect the Welsh Ministers or appointed persons having the flexibility to use multiple approaches when determining a matter.
- 12.7 The provision will enable Welsh Ministers to deal with applications, appeals and call-ins in an efficient and transparent manner, whilst maintaining flexibility by preventing alterations to an application before appeal, and by determining the application on the basis of the matters before the Local Planning Authority except where new information could not have been raised earlier.
- 12.8 These powers ensure that the appeal deals with the application in the form it was considered by the LPA and the local community, and on the basis of the same information.
- 12.9 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation is summarised below:

Topic Area	Description
Merged procedure rules	<p>It is the intention to merge the existing procedure rules into one set of rules, to reflect the Welsh Ministers or the Inspectorate using a mixture of procedures to determine a case. The new procedure rules will:</p> <ul style="list-style-type: none"> • Include provision about the procedure to be followed in connection with matters preparatory or subsequent to an inquiry, hearing or written representations, and about the conduct of proceedings; • Include provision about the procedure to be followed where steps have been taken with a view to the holding of a hearing or inquiry which does not take place; • Include provision about the procedure to be followed where steps have been taken with a

	<p>view to the determination of any matter by a person appointed by the Welsh Ministers and the proceedings are the subject of a direction that the matter must instead be determined by the Welsh Ministers;</p> <ul style="list-style-type: none"> • Include provision about the procedure to be followed where a direction is made requiring certain matters to be determined by the Welsh Ministers, and any further direction revoking that direction; • Allow the Welsh Ministers or Inspectorate to direct that certain information is submitted within certain timeframes; and • Enable proceeding to a decision without taking into account anything that was submitted outside the specified time scale.
<p>Prescribed circumstances in which new matters may be raised at appeal.</p>	<p>An appeal must be determined on the basis of the matters before the local planning authority when it made its decision except where new information could not have been raised earlier or was not raised because of exceptional circumstances.</p> <p>It is not proposed to prescribe a timescale or window within which new matters may be raised before an appeal is examined.</p> <p>It is, however, proposed that circumstances are prescribed where new matters may be raised. Those circumstances may include the adoption of new or amended local or national planning policy following notice of an appeal or refusal of an application. It may also include new information regarding the environmental condition of a site coming to light following ongoing investigations or the establishment of new habitats on site.</p> <p>The full range of circumstances will be subject to further research and public consultation.</p>

Relationship with other powers:

12.10 As of 12th November 2014 section 319B of the Town and Country Planning Act, section 88E to the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 21B to the Planning (Hazardous Substances) Act 1990 will enable the Welsh Ministers or the Planning Inspectorate to determine the procedure of an appeal, rather than the procedure being specified by the applicant/appellant.

Existing powers

12.11 The existing procedure rules are the:

- Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003 No. 390;
- Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003 No. 1271;
- Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003 No. 1266; and (applying to appeals under Sections 78-79 of the Town and Country Planning Act and appeals under Sections 20-22 of the Planning (Listed Buildings and Conservation Areas) Act 1990); and
- Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003 No. 1267.

12.12 These are to be superseded by a combined set of procedure rules which enable the mixture of procedures. These will be based on those rules used at present for inquiries, hearings and representations in writing and will apply to appeals and call-ins under the Town and Country Planning Act 1990 and requisite appeals and call-ins under the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990.

13. Town and Village Greens

Power(s): Part 7, Sections 47, 48, 49, 50 and Schedule 6.

[Sections 15, 15A, 15C, 24 and Schedule 1B of the Commons Act 2006]

Description:

13.1 These powers make changes to the process for registering Town or Village Greens (“TVGs”). They make the following reforms:

- Reduce the period within which an application to register a TVG can be made, after the cessation of use “as of right,” from two years to one; Enable a landowner to submit a statement and map in a prescribed form to the commons registration authority to effectively consent to the use of their land for recreational purposes without risk of an application to register a TVG being submitted;
- Exclude the right to apply to register a TVG in prescribed circumstances; and
- Make additional provision in relation to fees to register a TVG.

Policy Intention:

13.2 The system for registering town or village greens works independently of the planning system. This lack of integration has been identified as problematic, as there are increasing instances of the TVG registration system being used as a mechanism to frustrate development rather than for the purpose of protecting a particular area of land. Should an application to register a town or village green be successful, the land becomes permanently protected, and cannot be developed unless complicated compulsory purchase proceedings are initiated.

13.3 A suite of amendments to the Commons Act 2006 are proposed, similar to those implemented in England, to remove the overlap between these two processes. The existing strong protection for registered town or village greens will remain

unchanged. Procedural and technical aspects relating to these amendments are to be contained in secondary legislation, details of which are set out in the table below.

- 13.4 Other consequential changes, relating to fees and the period within which a TVG may be registered, are also proposed to achieve parity with the situation in England.
- 13.5 Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in subordinate legislation are summarised below:

Topic Area	Description
Statement by owner to end use as of right [s.15A]	<p>This section requires commons registration authorities to take prescribed steps in relation to producing a statement and accompanying map that an applicant must submit in a prescribed form.</p> <p>It is the intention to make regulations similar to the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013, SI No. 1774.</p> <p>These regulations enable the commons registration authority to set a fee for the registration of a declaration.</p> <p>The regulations set out requirements as to the form such applications must take, including a prescribed application form, the scale requirements for an accompanying map. It is possible for a landowner to submit a combined application to deposit a statement or declaration of a right of way under the Highways Act 1980 with a statement for a TVG under the Commons Act 2006, and that the combined application shall be treated as having been given to an appropriate authority at the same time as an application to deposit a statement and map or lodge a declaration under section 31(6) of the Highways Act 1980.</p> <p>The regulations also prescribe the steps which the authority receiving such an application must take upon receipt of a validly made application. They will also prescribe the information which the declaration register must include and the circumstances in which a declaration may be removed from the register.</p>

<p>Exclusion of right to apply for registration [s. 15C]</p>	<p>This section inserts Schedule 1B into the Commons Act 2006. It contains a number of trigger and terminating events within which an application to register a TVG may not be made.</p> <p>The Welsh Ministers may amend, remove or add trigger and terminating events to Schedule 1B by order.</p> <p>There is no intention to produce a statutory instrument to amend Schedule 1B at present. Any proposal to do so would be subject to separate consultation and approval.</p>
<p>Applications to amend registers: power to make provision about fees [s.24]</p>	<p>This section enables the Welsh Ministers to make provision for a fee to be payable to the person to whom the application is made and to the person by whom the application is to be determined (if different).</p> <p>There is no intention to set fees in relation to applications to register TVGs at present. Any proposal to do so would be subject to separate consultation and approval.</p>

13.6 The above policy intent is to be supplemented by guidance.

Relationship with other powers:

Existing powers

- 13.7 Existing procedures relating to the registration of TVGs are contained in the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012. Whilst it is not the intention at present to charge fees for TVG applications, any provision relating to those, under s.24 of the Commons Act 2006, SI No. 738, would be contained here.
- 13.8 A new statutory instrument is required to prescribe the form, content and fees for landowner statements. These are to be similar to the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013, SI No. 1774.

14. Anticipated timetable for delivery of subordinate legislation

Subordinate Legislation	Anticipated work start date	Anticipated date in force
Regulations to Establish SPP	This is dependent on timing of directions made by the Welsh Ministers	
SDP Regulations	08/2014	04/2017
LDP Regulations	10/2014	03/2016
DMPO to include:		
<ul style="list-style-type: none"> • Validation 	12/2014	03/2016
<ul style="list-style-type: none"> • Decision Notices 	12/2014	03/2016
<ul style="list-style-type: none"> • Notification of Development 	12/2014	03/2016
DNS to include:		
<ul style="list-style-type: none"> • Regulations on Criteria 	Work commenced	01/2016
<ul style="list-style-type: none"> • Regulation on Fees 	Work commenced	01/2016
<ul style="list-style-type: none"> • Regulations General 	Work commenced	01/2016
<ul style="list-style-type: none"> • Order General 	Work commenced	11/2014
<ul style="list-style-type: none"> • Procedure Rules 	Work commenced	01/2016
<ul style="list-style-type: none"> • EIA regulations 	Work commenced	01/2016
<ul style="list-style-type: none"> • Connected consents regulations 	Work commenced	01/2016
Option to Direct to include:		
<ul style="list-style-type: none"> • Regulation 	09/2015	04/2017

• Order	09/2015	04/2017
Section 215 Appeals Regulations	09/2015	03/2016
Costs on Applications, Appeals and References	07/2015	06/2016
Appeals Procedure Regulations	07/2015	06/2016
Appeals Procedure:		
• DMPO amendments	07/2015	06/2016
• Hazardous Substances Regulations	07/2015	06/2016
• Listed Buildings Regulations	07/2015	06/2016
Town and Village Greens declaration	07/2015	10/2016