Planning legislation: merely consolidated or completely overhauled?

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I. Introduction

Many of those who try to navigate their way around what is laughably called the 'statute book' would probably share the feelings of King Edward VI:

> I would wish that the superfluous and tedious statutes were brought into one sum together, and made more plain and short, to the intent that men might better understand them; which thing shall most help to advance the health of the Commonwealth.[2]

That was in 1550, and the problem has grown more than a little since then.

One area of public life that has seen a particular growth in Government activity over the last century – with a corresponding increase in both legislation and guidance – is the management and control of the use and development of land. Unfortunately, however, there is a broad measure of agreement within the professional community that the planning system is now far too elaborate, and that it significantly prevents the provision of much needed housing, infrastructure and other new development.[3] It also has very significant consequences for all those engaged in land transactions.

After a period of languishing in obscurity, planning issues also seem to have recently attained greater prominence with the public and the media; and the resulting political enthusiaism for change has resulted in a system that is as misunderstood as it is criticised.

Thus, lay commentators habitually refer to 'the need to reform planning law' when what they actually mean is 'the desirability of reforming planning policy and procedure' (national and local). But policy and law are inextricably linked, and a well-structured and conceptually coherent legal framework is likely to facilitate the emergence of a system of land use management that is both usable by professionals and generally acceptable to the public. The 'planning manifesto' recently produced by a firm of city solicitors suggested that the first of four themes underpinning further reform was simplification – defined as 'making the existing system, guidance,

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[2] Cited at the start of Office of the Parliamentary Counsel, Cabinet Office, *When Laws Become Too Complex: A Review into the Causes of Complex Legislation* (March 2013).

[3] See, eg 'A New Vision for Planning – there Must be a Better Way', a paper by Leonora Rozee, the former Deputy Chief Executive of the Planning Inspectorate, in *Planning Theory and Research* (March 2014); *The Planning System: The Need for a Real Overhaul*, Martin Goodall's Planning Law Blog (21 August 2014); 'Let's Rebuild our Rambling System', Angus Walker, in *Planning* (12 September 2014).

regulation and advice simpler; to save time, reduce waste, and avoid a culture where legally challenging everything is the norm'.[4]

The Government is at least to some extent aware of this problem. In recent years, it has started the process of structural reform by vigorously pruning the policy guidance issued by various relevant central Government departments[5] over many years and still in force. In March 2012, it introduced the National Planning Policy Framework (NPPF), a single document to replace a raft of 21 planning policy guidance notes and statements (PPGs and PPSs) and 23 other pieces of Government guidance.[6] Two years later, on 6 March 2014, a further 155 Circulars, Good Practice Guides, and other Government policy documents were scrapped, following the appearance of the on-line Planning Practice Guidance (PPG), which in turn resulted from the review of guidance by Lord Taylor.[7] And, significantly, the Labour Party made it plain that it intended to retain the NPPF if it were to win the election in 2015.[8] However, simply cancelling guidance is relatively straightforward.

The slightly more complex, and politically less exciting, task of simplifying secondary legislation has also begun to be tackled. The first move was the appearance of the Town and Country Planning (Development Management Procedure) (England) Order 2010 – which replaced 16 statutory instruments (SIs), but which was itself amended five times before being replaced just before the General Election in 2015.[9] At the same time, the Town and Country Planning (General Permitted Development) Order 1995 and the 22 Orders amending it were finally consolidated into one order.[10] And the Government has also undertaken, in response to the recent Red Tape Challenge, to consolidate a further 74 SIs into a more manageable 20; and to cancel altogether another 35, without replacement.[11] This too is a major step in the right direction – although it remains to be seen whether the remaining elements of that package will actually be implemented.

But all that, whilst extremely commendable, still leaves untouched the jungle of primary legislation. There are currently in force around 44 Acts that deal with land use and planning (including access and rights of way), and significant parts of a further 16 or so. Of those 60 Acts, about a third are relatively insignificant remnants of provisions that are now wholly or largely redundant. However, many of the remaining 40 or so are still substantial pieces of legislation, and the overall pattern of what topics are dealt with in which statutes, and in what level of depth, is completely unclear. They also omit many of the principles that have emerged in the

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[4] Addleshaw Goddard, *A Forward Looking Planning Manifesto* (August 2014).

[5] The DOE, the DETR, the DCMS, the DTLR, the ODPM, the DCLG.

[6] planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/annex-3-documents-replaced-by-this-framework/.

[7] www.planningportal.gov.uk/uploads/cancelled-guidance_06032014.pdf.

[8] Roberta Blackman-Woods MP, Shadow Planning Minister, at the Housing and Planning Conference, 16 September 2014.

[9] See now SI 2015/595; and TCP (Development Management Procedure) (Wales) Order 2012 (SI 2012/801).

[10] See now TCP (General Permitted Development) (England) Order 2015 (SI 2015/596); the 1995 Order remains in force in Wales.

[11] www.redtapechallenge.cabinetoffice.gov.uk/themehome/planning-administration/.

courts over the last 70 years, by way of clarifying the statutory text. It would seem to be desirable to draw them together into a clearly structured and consistently drafted legislative code, which can be readily understood and easily used by professionals, the public and the politicians.

The statutes regulating the development and use of land and related topics are thus arguably as "superfluous and tedious" as any, and certainly need to be brought together, and made more plain and short, so that men and women might better understand them.

This chapter explores how that might be achieved. It might be considered by some that its title is inaccurate, in that what is being advocated is in essence simply a programme of consolidation, with a measure of codification – which is not particularly 'radical'. However, the scope of the proposed exercise is ambitious, in that it seeks to cover not just planning but also cognate topics such as the built heritage, access to land, and compulsory purchase. It is also more radical than is likely to be immediately attractive to politicians, who tend to be more concerned with 'improving' the system of land-use control, rather than enabling the existing system to operate more effectively and to be generally understood.

II. The Law Regulating the Use and Development of Land

A. The Emergence of Primary Legislation

The increasing population and resulting development pressures in the period between the two World Wars saw the appearance of various pieces of town planning legislation, albeit in a somewhat embryonic form – culminating in the Town and Country Planning Act (TCPA) 1932 and the Town and Country Planning (Interim Development) Act 1943. That period also saw the emergence of the Rights of Way Act 1932, which would now be regarded as being at the border between planning law and highways law.

However, the modern planning system, as a universal mechanism to control the use and development of land, started with the passage of the New Towns Act 1946, the TCPA 1947, and the National Parks and Access to the Countryside Act 1949, which together set up the system that still exists, more or less, today. As will be clear from their titles, these were concerned with more than simply the regulation of development, and also started to facilitate the promotion of public development, and access to private land. Indeed, from today's perspective, it is perhaps surprising that the New Towns Act came first; but that emphasises the expectation at the time that the emerging system would be spearheaded by proactive involvement by the public sector to create a brave new world, whereas today it is to a large extent reactive.

The 1946 Act has been replaced by the New Towns Act 1981, and the programme of new towns has since been largely wound up. The statutory scheme under the 1981 Act still exists, at least on paper; but the emphasis is now more on special development bodies of one kind or another, such as development

corporations; and even they have been to some extent superseded. Essentially it has been realised that, not surprisingly, the shortage of public finance has limited the extent to which public authorities can on their own achieve major regeneration of existing urban areas; and the increasing encouragement given to public participation has led to major opposition to development on new sites outside built-up areas.

The 1949 Act is still at least partially in force, albeit supplemented by much subsequent legislation (notably the Countryside Act 1968, the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000). These together provide for the regulation of access to land, rights of way, and wildlife protection. The Law Commission is currently considering the reform of wildlife law; but the other elements of that package are still in existence, albeit in a somewhat unclear pattern. And the most recent development has been the unexpected growth in significance of commons and village green legislation, to the point where the Government is now seeking to rein it in as far as is politically acceptable.

The 1947 Act – as it turned out, much the most significant of the three original pieces of legislation – was substantially amended (in particular by the Town and Country Planning Act (TCPA) 1954, which largely repealed the financial provisions that had lain at the heart of the original post-war scheme), before being replaced by the TCPA 1962. That was a consolidating Act, and was in turn amended by the TCPA 1968 and other Acts, which were all, in turn, replaced by the next consolidating Act, the TCPA 1971. The 1971 Act lasted slightly longer than its predecessors, but was amended by (amongst others) the Town and Country Planning (Amendment) Act 1972, the Town and Country Amenities Act 1974, the Local Government, Planning and Land Act 1980 and the Housing and Planning Act 1986.

B. The 1990 Acts

In due course, the 1971 Act and the various Acts that had amended it were all swept away by four new Acts:

- the Town and Country Planning Act 1990 (dealing with mainstream planning control);
- the Planning (Listed Buildings and Conservation Areas) Act 1990 (P(LBCA)A);
- the Planning (Hazardous Substances) Act 1990; and
- the Planning (Consequential Provisions) Act 1990.

But the resulting clarity did not last. Since 1990, the pace of new legislation being enacted has, if anything, increased. Thus, immediately after the 1990 consolidation, the Planning and Compensation Act 1991 made significant changes to enforcement procedures. The Transport and Works Act 1992 introduced a new mechanism for gaining approval for transport projects. The Planning and Compulsory Purchase Act (PCPA) 2004 changed the system of development plans; and removed Crown immunity. The Planning Act 2008 introduced a system of 'development consent' for nationally significant projects. Further changes, not always particularly carefully considered, have been made by the Localism Act 2011, the Growth and

Infrastructure Act 2013 and the Enterprise and Regulatory Reform Act 2013. And a variety of other amendments have been made to the detailed provisions of the 1990 Acts

Further, whereas in the past there was at any time only one Town and Country Planning Act, which was from time to time amended, there are now a plethora of Acts of Parliament, with somewhat similar provisions; and many are freestanding pieces of legislation. There is thus no overall coherent scheme of statute law governing this whole area of activity; there are in fact, as noted at the outset, some 60 general Acts currently in force that deal in whole or in part with these issues, as listed in Table 1 – as well as some local legislation, especially in London. No doubt others could be added.

Table 1: Planning and development law as it is . . .

1. Green Belt (London and Home Counties) Act 1938 (the whole Act)
2. National Parks and Access to the Countryside Act 1949 (the whole Act)
3. Mineral Workings Act 1951 (the whole Act)
4. Town Development Act 1952 (the whole Act)
5. Agricultural Land (Removal of Surface Soil) Act 1953 (the whole Act)
6. Historic Buildings and Ancient Monuments Act 1953 (the whole Act)
7. Town and Country Planning Act 1954 (the whole Act)
8. Opencast Coal Act 1958 (the whole Act)
9. Town and Country Planning Act 1959 (the whole Act)
10. Caravan Sites and Control of Development Act 1960 (the whole Act)
11. Land Compensation Act 1961 (the whole Act)
12. Town and Country Planning Act 1962 (the whole Act)
13. Town and Country Planning Act 1963 (the whole Act)
14. Compulsory Purchase Act 1965 (the whole Act)
15. Civic Amenities Act 1967 (the whole Act)
16. Agriculture Act 1967 (Part III, Schedule 5 (rural development boards))
17. Forestry Act 1967 (Part II)
18. Caravan Sites Act 1968 (the whole Act)
19. Countryside Act 1968 (the whole Act)
20. Protection of Wrecks Act 1973 (the whole Act)
21. Mobile Homes Act 1975 (the whole Act)
22. Development of Rural Wales Act 1976 (the whole Act)
23. Inner Urban Areas Act 1978 (the whole Act)
24. Ancient Monuments and Archaeological Areas Act 1979 (the whole Act)
25. Local Government, Planning and Land Act 1980 (Parts XV, XVI, XVII, XVIII)
26. New Towns Act 1981 (the whole Act)
27. Wildlife and Countryside Act 1981 (Parts II, III; Schedules 10A–17)
28. Compulsory Purchase (Vesting Declarations) Act 1981 (the whole Act)
29. Acquisition of Land Act 1981 (the whole Act)
30. Derelict Land Act 1982 (the whole Act)
31. National Heritage Act 1983 (sections 32–38)
32. Wildlife and Countryside (Amendment) Act 1985 (the whole Act)
33. Wildlife and Countryside (Service of Notices) Act 1985 (the whole Act)
34. New Towns And Urban Development Corporations Act 1985 (the whole Act)
35. Mineral Workings Act 1985 (the whole Act)
36. Housing and Planning Act 1986 (the whole Act)
37. Environmental Protection Act 1990 (Part VII)

38. Town and Country Planning Act 1990 (the whole Act)
39. Planning (Listed Buildings and Conservation Areas) Act 1990 (the whole Act)
40. Planning (Hazardous Substances) Act 1990 (the whole Act)
41. Planning (Consequential Provisions) Act 1990 (the whole Act)
42. Planning and Compensation Act 1991 (the whole Act)
43. Transport and Works Act 1992 (Part I)
44. Leasehold Reform, Housing and Urban Development Act 1993 (Part III)
45. Environment Act 1995 (Part III, Schedules 7–10 (national parks); section 96, Schedule 13, 14 (mineral planning permissions); section 97 (hedgerows))
46. Regional Development Agencies Act 1998 (the whole Act)
47. Countryside and Rights of Way Act 2000 (the whole Act)
48. National Heritage Act 2002 (the whole Act)
49. Planning and Compulsory Purchase Act 2004 (the whole Act)
50. Natural Environment and Rural Communities Act 2006 (Parts 1, 5, 6)
51. Commons Act 2006 (provisions relating to village greens)
52. Sustainable Communities Act 2007 (the whole Act)
53. Planning Act 2008 (the whole Act)
54. Planning and Energy Act 2008 (the whole Act)
55. Marine and Coastal Access Act 2009 (Part 9)
56. Localism Act 2011 (Part 5, Chapter 3; Part 6; Part 8, Chapter 2)
57. Growth and Infrastructure Act 2013 (first part)
58. Mobile Homes Act 2013
59. Enterprise and Regulatory Reform Act 2013 (sections 60,61,63, Schedules 16, 17: heritage planning)
60. Criminal Justice and Courts Act 2015 (sections 91, 92, Schedule 16).

And it is not just the number of statutes; they are getting longer. Thus the 1946, 1947 and 1949 Acts together contained 161 sections and 18 Schedules. By contrast, the four 1990 Planning Acts alone – as they first appeared – contained 479 sections and 26 Schedules. But they have now been significantly lengthened, to around 550 sections, as a result of numerous amendments over the last 24 years; and they have been supplemented by separate provisions in other Acts (notably the PCPA 2004 and the Planning Act 2008) introducing a further 300 or so sections and numerous Schedules. Alongside all this, the separate Acts dealing with new towns, access, and countryside matters, amongst others, still remain.

The number of Acts would not of itself necessarily be a problem; but the way in which the legislation has emerged has led to the law on different topics being spread, apparently randomly, over a number of different Acts, which makes it difficult for those seeking to use and apply it – and indeed for Parliament when it seeks to introduce amendments. Law that is not clear is not helpful even to professionals working regularly in the field, who find it difficult to work with – and it is incomprehensible to ordinary citizens or to those, such as CABs, advising them – as is recognised by the Good Law Project currently being promoted by the Cabinet Office. It is noticeable, for example, that the principal reference work in this particular field, the *Encyclopaedia of Planning Law*, has expanded from three to nine volumes over the last 30 years; and that its editors still find it difficult to keep up with the numerous changes.

In the words of one seasoned professional, 'the planning system is a mess'.[12]

C. The Resulting Problem

There is periodically some enthusiasm on the part of Parliament for changing and 'improving' the system – although the experience of history is that such changes are not always for the better. But there has hitherto been little appetite within the political establishment (of any party) for simplifying the legislation that already exists, so as to have a clearer framework to guide present decisions, and to act as a stimulus for future change. Nor has there been much impetus on the part of the relevant central Government department to address this problem.

In the past, mainstream planning legislation has been consolidated every so often – generally by the Law Commission (as in 1962, 1971 and 1990) – although that has not dealt with the legislation in related fields. More recently, the Commission has produced a substantial review of the law of compulsory purchase and compensation; but that is yet to be implemented. And it is currently reviewing the law on the protection of wildlife. But it has no plans at present to tackle the 1990 planning legislation itself, far less the other related statutes.

It was suggested that, as part of its twelfth programme, starting in 2014, the Commission might wish to tackle a major exercise of simplifying this body of statutory law, along the lines indicated here; it declined, on the grounds that doing so would involve substantial resources of professional time and, more significantly, that these days it only tackles a project if there is an undertaking from the relevant Government department that indicates a serious intention to take forward law reform in that area. It commented:

> Our discussions with the Department for Communities and Local Government strongly suggest that they would not give us such an undertaking at present. The Department's view is that, given the significant amount of substantive law reform of planning law that has taken place in recent years, these changes should be allowed to become established before any further law reform takes place.[13]

That seems unfortunate, since it is precisely because there has been so much substantive law reform that there is the need for simplification. And simplification, as opposed to substantive change, fits in with the oft-repeated desire of Governments – of all parties – that the processes of central and local government, and the legislation regulating them, should be effective, efficient and proportionate, and that the planning system should be straightforward. More recently, therefore, Government officials have indicated that there may be a greater willingness to contemplate a more wide-ranging simplification exercise of the kind contemplated here, possibly in association with the Good Law Project.

What is needed is a major programme of consolidation and rationalisation, which would on any analysis take several years – during which, as the recent changes

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[12] Rozee (n 2).
[13] Letter to the author, 14 March 2014.

become established, it may indeed emerge that minor adjustments are needed to avoid resulting problems. More recently, as noted above, a number of commentators have started to press for a more substantial reform of the legislation.[14] And support has been forthcoming from the Planning Officers' Society, whose members would have the responsibility for implementing any changes.[15] It is hoped that, now the election is out of the way, ministers will be in a position to supply the necessary political backing for reform.

And, of course, this problem will get gradually worse; and so some measure of simplification will have to take place sooner or later. The legislation will not sort itself.

III. What Could be Achieved

A. General Approach

What is now required is thus a major programme of simplification. That would be primarily consolidation, but also some rationalisation, since it is inevitable that such an exercise would throw up a number of areas where there is scope for technical improvement, to remove redundant or overlapping provisions, and to clarify those that are obscure or inconsistent.

It would be good to ensure that, as far as possible, all the relevant legislation is adjusted on a consistent basis to ensure that broad principles are set out in primary legislation whereas detailed procedural provisions should in future all be in secondary legislation – in line with the approach that has been increasingly followed in recent years. That would facilitate the making of future changes to detailed procedures without the waste of parliamentary time. Similarly the detailed arrangements as to the operation of the various public bodies should be in secondary legislation – so that each body can look to a single set of regulations that provides for its day-to-day requirements.

It is noteworthy that there are certain statutory controls that are largely the subject of freestanding sets of regulations – such as those governing hedgerows, protected trees, and outdoor advertising.[16] Doing this simplifies the relevant Act itself, and also helps users as they can find all the law they need in one place. It would be sensible to see whether there are any other codes that could similarly be taken out of primary legislation.

It would also be helpful to include some of the principles established by the courts by way of interpreting the text of the statutes. For example, the concept of planning permission being required for a change in the use of a parcel of land begs the question of which parcel should be considered; but the doctrine of the 'planning

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[14] See Note 2 above

[15] 'This has considerable merit'; email to author, 23 July 2014.

[16] Hedgerows Regulations 1997, TCP (Control of Advertisements Regulations) 2007 (SI 2007/783), and TCP (Tree Preservation) Regulations 2012 (SI 2012/605).

unit' – the device invented by the courts to deal with this issue[17] – is nowhere mentioned on the face of the statute. And the extent of the curtilage of a building is to be considered at different dates for different purposes.[18] The common feature of such points is that they came before the courts as a result of uncertainty or confusion as to the interpretation of existing legislation, which were (to a greater or lesser extent) resolved by the resulting judicial rulings. It would be good if the resulting definitions and concepts were to be incorporated into the body of the relevant statute.

The same is true of certain principles that have, entirely non-controversially, been incorporated for many years within Government guidance but which have, in effect, acquired the status of legal principles – such as the tests to be applied to determine the validity of planning obligations and conditions.[19]

Finally, it would obviously be good to examine how other countries have dealt with the legislation relating to these topics – the underlying problems are, after all, the same, even if the political and legislative arrangements are different. France, for instance, revised its planning laws in 2007 because of their complexity and the consequent over-involvement of judicial bodies in planning matters. And Ireland has a system that is similar to the UK, but somewhat less elaborate. There may well be lessons that can be learnt.

If an exercise of consolidation also includes an element of codification, or indeed other forms of change, they would require Parliamentary approval, which would open up the possibility of the whole exercise becoming procedurally over-complex, resulting in nothing being achieved. However, it would be sensible at least to consider what technical changes would in principle be desirable, and whether they would be politically desirable or otherwise.

In accordance with those principles, the general aim should thus be to consolidate the 60 or so Acts dealing in whole or part with these issues, and to reduce them to a consistently drafted set of new Acts, each dealing with a discrete topic. Clearly there may be a number of ways in which the overall subject area could be divided, but the eight headings below together indicate one possible statutory scheme.

B. Specific Topics

i. Planning Authorities and Planning Policy

The starting point should be a clarification of the various public authorities administering the system. There should be a clear rule that 'the planning authority' means the unitary local authority, where there is one, and the district council in areas where there is a two-tier system; save that national parks authorities, the Broads Authority and development corporations would remain the sole planning

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[17] *Burdle v Secretary of State* [1972] 1 WLR 1207.
[18] Compare *Morris v Wrexham CBC* [2002] 2 P&CR 7 and *Lowe v Secretary of State* [1991] 1 PLR 58.
[19] NPPF, paras 204, 206.

authority in their respective areas.[20] County councils, where they exist, would then only be planning authorities where specifically provided for in relation to a specific function (as with, for example, minerals and waste planning) – although of course a county council could be appointed as such in a particular case by an agreement under the Local Government Act 1972.

In the past, Parliament has created a variety of other types of authority that have been capable of being planning authorities – including enterprise zone authorities, AONB conservation boards, housing action trusts, and English Partnerships.[21] In practice these authorities have never been made planning authorities. It would of course always be possible in the future for a new body simply to be given the same powers as a development corporation – as was effectively done with the Olympic Delivery Authority.[22]

The Planning Inspectorate is also a key player; but is nowhere regulated – as it is in Ireland.[23] That may be satisfactory, but it should at least be considered.

Secondly, there needs to be a clear statement of what is the policy basis for the planning system. There is a hierarchy of policies, which in England includes the following:

- the National Planning Policy Framework, and Planning Practice Guidance;
- national policy statements relating to specific topics (introduced by the Planning Act 2008);
- the spatial development strategy, development plan documents, and the sustainable community strategy (now regulated under Parts 2 and 3 of the PCPA 2004, and the Sustainable Communities Act 2007);
- neighbourhood plans (introduced by the Localism Act 2011); and
- supplementary planning documents.

This all needs to be given a logical statutory basis. For example, central Government policy (the first item on the list) is hugely influential in practice, but is nowhere mentioned on the face of the statute. And the much-vaunted primacy of the development plan is to be found not in the TCPA 1990, but in section 38(6) of the PCPA 2004, which has itself been much altered. Indeed, curiously, the 1990 Act now contains nothing at all about planning – as opposed to development control.

The procedural details as to the actual production of each type of policy should be governed by secondary legislation. But thought should be given as to the extent to which primary legislation should influence the topics that may or should be the subject of policies – why, for example, is there a specific Act allowing the inclusion in the development plan of policies encouraging energy efficiency?[24] The

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[20] TCPA 1990, Pt 1, Sch 1.
[21] TCPA 1990, s 6; Housing Act 1988; Countryside and Rights of Way Act 2000, s 86.
[22] London Olympic Games and Paralympic Games Act 2006, s 5.
[23] Planning and Development Act 2000 (An Bord Pleanala), Pt VI.
[24] Planning and Energy Act 2008.

emergence of a single statement of central Government policy is a good time for this to be reviewed.

ii. Countryside

The next step logically is to provide for the protection of the natural environment, including but not limited to the countryside. This is largely the subject of a plethora of statutes going back over many years: Parts I, II and III of the National Parks and Access to the Countryside Act 1949, Part II of the Forestry Act 1967, the Countryside Act 1968, Part II of the Wildlife and Countryside Act 1981, the Wildlife and Countryside (Amendment) Act 1985, the Wildlife and Countryside (Service of Notices) Act 1985, Part VII of the Environmental Protection Act 1990, Chapter I of Part VIII of the TCPA 1990, Part III and section 97 of the Environment Act 1995, Parts III and IV of the Countryside and Rights of Way Act 2000, and Parts 1 and 5 of the Natural Environment and Rural Communities Act 2006.

The administration of Government policy in this area has suffered numerous changes, with the arrival and departure of the Countryside Commission, the Countryside Agency, the Commission for Rural Communities, and English Nature. The starting point here should be to make plain the structure and role of Natural England, the national parks authorities, and (possibly) the Broads Authority.

There is then a hierarchy of different types of designation – including national parks, areas of outstanding natural beauty (AONBs), and nature reserves, as well as special protection areas under European legislation. These need to be clarified, along with the need for consent to be obtained for operations affecting them. Also relevant is the law relating to works to trees, recently simplified in the Planning Act 2008, and hedgerows.

The legal framework for wildlife management – described recently by the Law Commission as 'overly complicated, frequently contradictory and unduly prescriptive' – is clearly related to this topic. However, it may be more appropriate for this to be the subject of a separate statute, in the light of any conclusions emerging from the Commission's review.[25] And thought should be given as to whether forestry legislation should remain separate, or be brought within the general scope of the present simplification exercise, especially following the creation of Natural Resources Wales, which has taken over the Forestry Commission's functions in Wales.

iii. Built Heritage

There is then the relatively limited topic of identifying those elements of the built heritage which are to be afforded special protection – referred to in recent Government policy as 'designated heritage assets'.[26] They include world heritage sites (governed by the Unesco World Heritage Convention, but hardly mentioned in

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[25] lawcommission.justice.gov.uk/areas/wildlife.htm.
[26] NPPF, Glossary.

UK legislation), scheduled monuments (under the Ancient Monuments and Archaeological Areas Act 1979), listed buildings and conservation areas (under the Planning (Listed Buildings and Conservation Areas) Act 1990, amended by Part 5 of the Enterprise and Regulatory Reform Act 2013), protected wrecks (under the Protection of Wrecks Act 1973, and registered parks and gardens (largely outside legislation).

The relevant statutory provisions simply need to be brought together. The powers as to the carrying out of repairs and the giving of grants (in the Historic Buildings and Ancient Monuments Act 1953 and the 1990 Act) could also be simplified. It would also be sensible to give statutory force to the new structure of English Heritage and Historic England, introduced in April 2015[27] – replacing the provisions currently in the National Heritage Acts of 1983 and 2002.

Areas of archaeological importance (under the 1979 Act) have not been much used, and the Government agreed twenty years ago to abandon that system at the first appropriate legislative opportunity.[28] That could be done as part of this exercise.

iv. Promotion of Development

As noted already, the original core of the planning and development legislation was the encouragement and facilitation of development by public bodies, principally through the programme of new towns. It is perhaps not surprising that there have been periodically calls for the reinstatement of such a programme, as reliance on private sector development alone has not been sufficient to generate the required level of new building activity. The Government has also started to promote the idea of new garden cities.[29] Latterly, the preferred vehicle for public-sector urban regeneration has been the urban development corporation, usually created for a specific period and, more recently, mayoral development corporations in London.[30]

It would be sensible to consolidate and update the relevant legislation, which can then be harnessed to support any future development initiative by the government of the day. This is to be found in the Inner Urban Areas Act 1978, Parts XV, XVI and XVIII of the Local Government, Planning and Land Act 1908, the New Towns Act 1981, the New Towns and Urban Development Corporations Act 1985, Part III of the Leasehold Reform, Housing and Urban Development Act 1993, and Chapter 2 of Part 8 of the Localism Act 2011.

The reduction of the burden of planning controls through the creation of simplified planning zones and enterprise zones, on the other hand, has generally not been a success, in that it has been hardly taken up in practice. It is noteworthy that the current guidance from central Government makes almost no reference at all to

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[27] www.gov.uk/government/uploads/system/uploads/attachment_data/file/263943/1291-B_English_Heritage_Accessible__1_.pdf .

[28] *Protecting the Heritage* (May 1996).

[29] Budget 2014, paras 1.145, 1.146.

[30] Local Government, Planning and Land Act 1980, Pt XVI; Localism Act 2011, Pt 8, Ch 2.

either. Simplified planning zones could therefore be simply abandoned, along with references to enterprise zone authorities as planning authorities.

Arguably this might be the place to include the provisions relating to the improvement of waste land, in Chapter II of Part VIII of the TCPA 1990 – a rarely used but potentially effective form of intervention to achieve the improvement of land in the public interest.

v. Regulation of Development

This is probably the most significant in practice of the various topic areas. There are in fact a variety of consent mechanisms within the overall ambit of the 'planning system'. The principal one is planning permission, under Parts III to VII of the TCPA 1990. This has been the subject of numerous amendments over the years – notably by the Planning and Compensation Act 1991 and the Localism Act 2011 (in relation to enforcement), and the Planning and Compulsory Purchase Act 2004 – and badly needs to be clarified.

In particular, the Government now seems to envisage several types of consent mechanism:

- outline permission in response to an application, followed by approval of reserved matters;
- detailed permission, followed approval of matters reserved by condition;
- permission granted by development order, subject to approval of details in response to application;
- permission granted by development order, with no need for any further approval.[31]

As noted, the Government has at last consolidated the permitted development order, but the primary legislation also needs to be clarified.

It is also noticeable that there are a variety of duties – under a wide variety of statutes and regulations – laid on those determining applications for planning permission, including the following:

- to make the decision in accordance with the development plan, so far as material;[32]
- to have special regard to the desirability of preserving any listed buildings affected, and pay special attention to desirability of preserving or enhancing the character of any conservation area; [33]
- to have due regard to the need to eliminate unlawful discrimination against disabled people;[34]

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[31] Budget 2014, para 1.147.
[32] TCPA 1990, s 70; TCPA 2004, s 38(6).
[33] P(LBCA)A 1990, ss 66, 72.

- to take into account representations made by owners of land or in response to publicity for application;[35]
- to have regard to desirability of conserving the natural beauty and amenity of the countryside;[36] and
- to have regard to any other material considerations.[37]

This list is the result of past political battles, but should be rationalised – or at the very least made explicit in one place. Should other matters be included?

In addition, alongside planning permission, there are a variety of other codes, controlling:

- certain types of mining (under Part I of the Opencast Coal Act 1958 and section 96 of the Environment Act 1995);
- caravan sites (under the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968, the Mobile Homes Act 1975, Part XVII of the Local Government, Planning and Land Act 1980);
- works to scheduled monuments and listed buildings (under the Ancient Monuments and Archaeological Areas Act 1979 and Part I of the Planning (Listed Buildings and Conservation Areas) Act 1990);
- the storage of hazardous substances (under the Planning (Hazardous Substances) Act 1990); and
- the display of outdoor advertising (under the TCP (Control of Advertisements) Regulations 2007).

These have to some extent been the subject of consideration by the Penfold Review on non-planning consents – and that has resulted in changes being made including, for example, the merging of conservation area consent into planning permission (by the Enterprise and Regulatory Reform Act 2011). But there is no reason why the same approach could not easily be adopted in relation to scheduled monument consent and listed building consent – the latter, in particular, is now very closely aligned to planning permission, after changes made by the 2011 Act, and there is little purpose served by the existence of the two systems operating in parallel.

It might be possible to integrate some of these other controls into the mainstream planning permission system; or it may be appropriate to separate them out into regulations. Advertising, for example, is classified as 'development' in the Republic of Ireland, and accordingly largely dealt with under normal planning

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[34] Equality Act 2010, s 149.
[35] TCP (Development Management Procedure) (England) Order 2015 (SI 2015/595), art 33; TCP (Development Managements Procedure) (Wales) Order 2012 (SI 2012/801), art 21.
[36] Countryside Act 1968, s 11.
[37] TCPA 1990, s 70(2).

legislation;[38] but in the UK it has always been dealt with by means of a freestanding code in secondary legislation.

Another system of control operating alongside the normal planning system is the new procedure to obtain 'development consent' under the Planning Act 2008 (as amended by the Localism Act 2011) for major infrastructure projects. This was initially dealt with by the Infrastructure Planning Commission, but has recently been brought under the auspices of the Inspectorate. Now that system is starting to bed down, it will soon be possible to see whether it is helpful for it to remain separate, or whether it should be incorporated into mainstream planning control – and how it should relate to the system of authorisation by orders under the Transport and Works Act 1992.

Planning inquiry commissions, on the other hand, have never been used since the idea was first introduced, and could now be abandoned.

'Development consent' is also the term used in European legislation to refer to the authorisation of proposals requiring an environmental impact assessment. Generally that will be planning permission, and the assessment will be carried out under a procedure provided for in a freestanding set of regulations, which transpose the requirements of the relevant EU directives, which have now been codified as Directive 2011/92/EU.[39] The applicability of that procedure, and its application in practice, have been the subject of a large number of court challenges. However, in principle, the purpose of the Directive is the same as that of the UK planning system – to assess the impact of proposed development, and to see whether that impact (if harmful) is outweighed by the resulting benefit – and it is arguably unsatisfactory to have the two systems operating in parallel. It would therefore seem to be desirable to explore whether they can be brought together into a single regime that complies with the Directive but also fits seamlessly into the mainstream planning system. Here, too, thought will need to be given as to how much should be in primary legislation and how much in secondary regulations.

Indeed, the term 'development consent' is in many ways preferable to 'planning permission' – it is after all the proposed development that is to be authorised, not the plan. But that may be a step too far, as the term 'planning permission', however illogical, is well entrenched.

vi. Infrastructure Funding

There have been various attempts to introduce a financial or fiscal element into the control of development, from betterment levy through to development land tax. The most recent attempt, the community infrastructure levy (CIL), is largely the subject of regulations, but the relevant primary legislation – in Part 11 of the Planning Act 2008, as amended by the Localism Act 2011 – could usefully be the subject of a separate statute.

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[38] Planning and Development Act 2000, ss 2(1), 3(2)(a); Planning and Development Regulations 2001 (SI 2001/600), Sch 2, Pt 2.

[39] TCP (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824).

Alternatively it might be preferable for a new Infrastructure Act to incorporate both the CIL provisions and the development consent procedure under the 2008 Act.

vii. Access and Rights of Way

One strand of the legislation in this area has always been to achieve a degree of public access to some land – initially by means of access orders to open country under Part V of the National Parks and Access to the Countryside Act 1949, and more recently by the introduction of the 'right to roam' (access land) provisions in Part I of the Countryside and Rights of Way Act 2000.

More recently, the law relating to town and village greens (now in the Commons Act 2006, recently amended by the Growth and Infrastructure Act 2013) has in effect provided another form of access land – albeit as a probably unintended by-product of commons legislation and customary rights law. It would be sensible to recognise this by introducing village greens as a further category of access land under the 2000 Act.

Related to this is the creation of rights of way over land. The law on this is spread across several statutes – Part IV of the 1949 Act, Part III of the Wildlife and Countryside Act 1981, Part II of the 2000 Act, and Part 6 of the Natural Environment and Rural Communities Act 2006 – and is the subject of further changes proposed in the Deregulation Bill currently before Parliament.[40] These have together created a procedure that would benefit from being consolidated and updated.

It would be helpful to draw together all this legislation, and also to link it to the main planning system. Compared to other provisions considered in this chapter, these are not urgently in need of reform, and may well need little if any updating; but since they are linked to others that are in need of simplifying, it would be sensible not to leave them unconsolidated.

viii. Land Acquisition and Compensation

The legislation governing the powers of public authorities to acquire land under compulsory purchase powers or by agreement is notoriously complex.

Acquisition procedure is governed principally by the Compulsory Purchase Act 1965, the Acquisition of Land Act 1981, the Compulsory Purchase (Vesting Declarations) Act 1981, and Part IX of the TCPA 1990, with a few additional provisions to be found (still) in the TCPA 1959. The assessment of compensation is the subject of the Land Compensation Acts of 1961 and 1973, with additional provisions in Part II of the Opencast Coal Act 1958 and Part III of the Planning and Compensation Act 1991. Additional provisions have been inserted into many of the above Acts, under both headings, by Part 8 of the PCPA 2004 and Part 9 of the

[40] Deregulation Bill, councils 21-27 and Sch 7.

Localism Act 2011; and further changes made by the Growth and Infrastructure Act 2013.

This has been the subject of two major Law Commission reports, relating to acquisition procedure and a compensation code.[41] These have not been progressed by the Government, which is unfortunate. It would be possible simply to consolidate the statutes referred to above as part of the general simplification exercise envisaged by this chapter, but clearly such an exercise would be a golden opportunity to enact the recommendations of the Commission, along with other changes being considered by the Government in consultation with key players such as the Compulsory Purchase Association.[42]

It might well be that the consolidation of the legislation relating to the acquisition of land should be a separate exercise, following on immediately after the other simplification proposals described in this chapter. This is an area of law fraught with technicalities, and it would be essential, more than with any of the other topics considered here, to ensure that any draft Bill was the subject of extensive consultation with all major stakeholders.

C. Miscellaneous Provisions

It would be helpful for users of the legislation if all of the supplementary provisions relating to the above topics were to be gathered together in one place. This would include their application to the Crown, local authorities, statutory undertakers, and in other special cases (which can be referred to regularly by those to whom they are relevant, but ignored by others). Certain other matters could also be usefully dealt with on a generic basis, to ensure consistency – such as entry onto land, injunctions, and some financial provisions.

One of those more general issues is the specific statutory provisions allowing for court challenges to decisions. It would be worth considering whether, following the changes recently made to these provisions,[43] which bring them largely into line with those relating to general judicial review challenges under Part 54 of the Civil Procedure Rules (CPR), they are in fact still needed at all.

And all of the relevant definitions should be in one place (or at least referred to in one place), so that they can then be used on a consistent basis in all of the other Acts. Indeed there may be scope for issuing an online version of the new legislation with automatic hyperlinks to definitions (and relevant secondary legislation).

Finally, as well as the 40 or so statutes referred to above in relation to specific topics, there is a further, relatively small, group of statutes (or parts of statutes) that have been largely repealed, or whose remaining provisions are now

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[41] lawcommission.justice.gov.uk/areas/towards-a-compulsory-purchase-code-1-compensation-a%20consultative-report.htm.

[42] See Hansard, Written Answers, 25 April 2013, col 1120W.

[43] Criminal Justice and Courts Act 2015, s 91 and Sch 16, para 3.

more or less redundant. These need to be finally dispatched; although there may need to be a very small amount of consequential tinkering with other Acts to ensure that there is no resulting loss of effective control. That could be left to a future Statute Law Reform exercise to be carried out by the Law Commission, but it would seem to be more logical to do it as part of the present simplification exercise.

Acts that could be repealed in their entirety thus include the Green Belt (London and Home Counties) Act 1938, the Mineral Workings Act 1951, the Agricultural Land (Removal of Surface Soil) Act 1953, the Town and Country Planning Acts of 1954, 1962 and 1963, the Civic Amenities Act 1967, the Mobile Homes Act 1975, the Development of Rural Wales Act 1976, the Derelict Land Act 1982, the Mineral Workings Act 1985, the Housing and Planning Act 1986, and the Regional Development Agencies Act 1998. Part III of the Agriculture Act 1967 (hill land) and sections 18–23 of the Forestry Act 1967 (felling directions) are also redundant, and could be repealed at the same time.

It has also been noted above that the provisions relating to simplified planning zones and areas of archaeological importance could be abolished without any loss. Those relating to scheduled monument consent, listed building consent and village greens are not required in their present form, and could more satisfactorily be included in other statutory codes.

Part II of the TCPA 1990 (development plans) has already been repealed, as has Part V (compensation for restrictions on new development in limited cases). And of course, once the whole exercise has been completed, the Planning (Consequential Provisions) Act 1990 would be redundant, and would be repealed.

D. Wales

A further consideration is that, at present, nearly all of the 60 Acts listed in Table 1 apply to England and Wales. However, the details, particularly as to the administration of the various control regimes, are starting to diverge on either side of the border. The role of the Secretary of State is taken by the Welsh Ministers; local authorities in Wales are all unitary; the development plan regime is different; and some of the 'national' bodies – such as Historic England, Natural England, and Natural Resources Wales – operate either in England or in Wales, but not both.

And almost all secondary legislation, including many commencement orders bringing into effect new primary legislation – now applies only in one or other jurisdiction.

This is likely to continue, as the Assembly exercises its recently acquired powers to legislate in this area. The Planning (Wales) Bill is thus "post Stage 4" in its passage through the Assembly, and on course to obtain Royal Assent before the summer; although this contains only relatively modest technical amendments.[44] But it is noticeable that it is in the form of amendments to the TCPA 1990 and the PCPA 2004; and the very fact that it includes a number of new provisions to be inserted

[44] http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=11271

into the TCPA 1990 with numbers such as 'section 71ZB' indicates that something needs to be done. And the Historic Environment (Wales) Bill is at Stage 1, and likely to obtain Royal Assent in early 2016; but this too is likely to be largely technical.

A major simplification exercise of the kind envisaged in this chapter would be an ideal time to produce for England and for Wales separate versions of each of the nine or so new replacement statutes for the topics listed above. Initially the two versions would be similar, although by no means identical – somewhat in the same way as, for example, the Town and Country Planning Act 1947 was, at least initially, very similar to the Town and Country Planning (Scotland) Act 1947 – although in due course they would no doubt start to diverge. But it would be much easier to do the exercise of creating a statutory code for Wales at the same time as doing it for England, rather than creating a Welsh code on a piecemeal basis.

This would fit in well with the current project by the Law Commission to consider the law relating to planning and development control in Wales;[45] although it would go further than just planning. And clearly it will have implications for the Government of Wales Acts of 1998 and 2006.

IV. Related legislation outside the scope of the simplification project

Of course any area of law is only one part of the overall body of legal rules and principles in force at any one time. And clearly there has to be a limit to the extent of any simplification exercise, however ambitious in scope. There will therefore be some legislation that will be relevant to and affected by such an exercise, but which will be outside its immediate focus.

A. Legislation Governing Specific Activities, with Land Use Implications

There are a variety of statutes relating to specific activities and industries that have major land use implications. These include amongst many others the Forestry Act 1967, the Housing Act 1988, the Water Act 1989, the Electricity Act 1989, the New Roads and Street Works Act 1991, the Water Industry Act 1991, and the Housing and Regeneration Act 2008. These would generally fall outside the scope of the presently envisaged simplification exercise, but it would be appropriate at least to consider including some provisions in them. They would in any event need to be amended to reflect the outcome of the simplification project.

Part I of the Transport and Works Act 1992 is somewhat similar, in that it relates to the authorisation of various categories of public works, particularly in relation to railways and harbours. This too might prove to be outside the scope of the simplification exercise, but it would be worth exploring whether it should be

[45] lawcommission.justice.gov.uk/areas/planning-in-Wales.htm.

incorporated into the new provisions for the approval of major infrastructure projects, currently in the Planning Act 2008, as there is some degree of overlap.

One other category of special legislation is the group of Measures of the Church England (which have a status equivalent to that of Acts) governing works to churches and cathedrals – notably the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (recently amended) and the Care of Places of Worship Measure 1999. It is to be hoped that the General Synod will soon be consolidating these and other related provisions into a new Care of Churches Measure; but that will obviously be outside the scope of the present exercise – as is the Care of Cathedrals Measure 2011, itself the result of a consolidation.

B. Other Parts of the United Kingdom

The corresponding law in Scotland would in general be outside this exercise – notwithstanding the result of the recent referendum. However, the statutes relating to ancient monuments apply to the whole of Great Britain, even though the Historic Environment (Amendment) (Scotland) Act 2011 has resulted in them applying somewhat differently north of the border. It would therefore be necessary to make appropriate provision for the continuing application of the relevant law to Scotland, so that there were no loose ends. And the same approach may need to be applied in relation to other GB-wide legislation, such as the Forestry Act 1967 and the Transport and Works Act 1992.

Northern Ireland too would be outside this exercise. However, it is noticeable that the legislation there, covering broadly the same topics, is significantly more concise; and it would be good to explore how this is achieved, and whether there are lessons to be learned.

V. The Way Forward

A. The Timing

There is never an ideal time for legislative reform. However, there has been a considerable amount of legislation dealing with planning and related subjects in the last decade, culminating in the Acts of 2004, 2008, 2011 and 2013 noted above. Not only has this lead to the statute law in this field being unduly complicated, but it also means that the Government may have limited enthusiasm for further substantive change over the next five years. And the Conservative Manifesto in the run-up to the 2015 general election and the Queen's speech immediately after it both indicate a wish to pause before making further changes.

This is therefore a good time to consolidate the mass of existing legislation, before the iterative process of change starts all over again.

B. The Process

One apparent objection to such a programme, however desirable it might seem to be in principle, is that there would not be enough (or any) Parliamentary time. However, this problem can be lessened if the process is carefully managed.

There has been hitherto a practice, spearheaded by the Law Commission, whereby the major statutes were periodically consolidated; and the Commission has been responsible for some 200 consolidation Bills in the 50 years since its creation. The availability of electronic databases means that it is no longer necessary to consolidate legislation solely to produce a reliable up-to-date version of an Act, as amended, but there is still a need for a consolidation process to draw together different enactments on a topic, or series of related topics, into a single Act or set of Acts. The Commission notes that 'The need is particularly acute following repeated legislative activity on a subject over several years that has not resulted in a single statutory text'.[46] That clearly applies in the case of the statutory code considered in this chapter.

However, the Commission's consolidation programme has been significantly curtailed in recent years. That is no doubt particularly due to shortage of resources. A major consolidation exercise is very time-consuming, and in practice the Commission normally expects a financial contribution to be made by the relevant Government department towards its costs. Just as importantly, there also needs to be a commitment by the department to provide sufficient practical support to see the project through to completion and enactment. And that is likely to include new secondary legislation and guidance, along with training for all the principal stakeholders in the field.

Amendments to legislation, found to be necessary in the course of the consolidation exercise (or already known to be desirable), cannot be directly incorporated in consolidation Acts. However, they could be the subject of a legislative reform order (LRO), made under the Legislative and Regulatory Reform Act 2006. That enables an LRO, which can amend primary legislation, to be made where a Minister is satisfied that the order would remove or reduce any burden resulting from the legislation in question. A 'burden' is defined as 'a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity'; and may be 'financial cost or administrative inconvenience resulting from the form of any legislation (for example, where the legislation is hard to understand)'.[47]

An LRO must be the subject of extensive consultation, including with all relevant organisations likely to be affected by the proposals in it.[48] It is then considered by the Regulatory Reform Committee of Parliament, again in accordance with an expedited procedure.[49]

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[46] lawcommission.justice.gov.uk/areas/consolidation.htm.
[47] Legislative and Regulatory Reform Act 2006, s 1(3), (5).
[48] Legislative and Regulatory Reform Act 2006, s 13.
[49] Standing Orders of the House of Commons, SOs 18, 141.

That might seem to be an attractive method of dealing with any necessary changes; but experience suggests that there can be considerable uncertainty as to what may properly be included within an LRO. The alternative approach would be to have a more conventional amending Bill, incorporating all the necessary technical changes, major and minor, drafted by reference to the relevant statutes as they stand. Such a Bill would hopefully be relatively uncontroversial. It would of course take up some Parliamentary time, but the reward would be that the amending provisions (along with any others made by Parliament during the passage of the Bill) could be incorporated into the emerging consolidated package, timed to come into force on the same date. The result would thus be to bring all the new law into force at once, including the changes – with the possible exception of those relating to acquisition of land.

C. The Next Steps

It would seem that the best way forward is for a dedicated group to be set up to handle the project on a full-time basis, under the direct supervision of the Under Secretary of State for Planning. The devil is in the detail; so the group should be led by an experienced practitioner, with drafting support from the Office of the Parliamentary Counsel (OPC), and professional and secretarial support from the Department for Communities and Local Government (DCLG). It would probably be most appropriate for the group to work within the DCLG. And it would be expedient for the work of the group to be overseen by a review panel or representatives of the organisations and professions likely to be affected by the outcome of the exercise.

The first step would presumably be the production of a full report setting out the broad pattern of the legislation likely to result from the exercise, with an indication of which provisions seem to be redundant. That could be along the lines of this chapter, but much expanded to include full details as to how all of the existing law could best be dealt with, and what changes would be necessary or desirable. As part of this, it would also be essential to consider carefully what other legislation should be included or excluded in such a review. Such a report would need to be produced in conjunction with the Law Commission (as far as it wishes to be involved) and all the key stakeholders in the area – and of course liaising with the relevant authorities in Wales and Scotland. That would be necessary to ensure that all practitioners and others in the field were aware of the forthcoming changes – although it would also assist in complying with the requirements of the LRO procedure if that were eventually to seem the appropriate route to deal with amendments. And the ongoing exercise would no doubt be the subject of appropriate presentations to professional and academic conferences and to Government bodies.

Once the relevant Government departments are committed to going along with the exercise in principle, it would then be possible to prepare a series of new Bills in draft, incorporating all of the existing law, corrections and minor improvements (as defined above). In parallel, either an LRO or, more likely, an amending Bill would need to be prepared, presumably by the OPC, incorporating any more substantial changes. Not the least problematic part of the exercise would be

to check all of the references to and from other legislation, to ensure that the consequential effects of the simplification exercise were properly thought through.

It would also be helpful to produce in parallel as much as possible of the accompanying secondary legislation, as that would probably take on an increased role by way of providing more of the detailed provisions, some of which are currently in primary legislation. Happily, that process would be greatly assisted by following on from the current Red Tape Challenge, which is hugely reducing the amount of secondary legislation.

And finally the LRO or the amending Bill, and the consolidating Bills thereafter, would need to be steered through the relevant Parliamentary process. Bearing in mind that the amending Bill would probably be a relatively uncontroversial measure largely containing technical amendments – such as transferring items from primary to secondary legislation, abolishing redundant provisions, and incorporating principles from established case law – its passage should not be unduly difficult. It would probably not be necessary to introduce a new standing order, as was necessary for the Tax Law Rewrite (TLR) Programme in the period 2000–10.[50]

Consolidation Bills – that is, Bills that consolidate existing Acts with no substantive changes other than corrections and minor improvements – can go through Parliament by means of an expedited procedure, involving consideration by a special joint committee, without taking up scarce parliamentary time.[51] Such legislation is generally prepared by the Law Commission; but there is no requirement that it must be.

D. Timescale

It is difficult to be precise about the length of time that would be required to complete the exercise. However, bearing in mind the experience of those involved with the TLR programme – the nearest comparable exercise carried out recently – an initial estimate might be that it would occupy a full-time group of three or four people for around three or four years.

If therefore, for example, the exercise were to start in early 2016, that would enable the recently elected Government to incorporate into the process (via the amending Bill) any changes it might wish to introduce. With or without any such changes, the resulting package of Bills might be complete in 2018–19.

There would then need to be a run-in period during which guidance could be updated, and websites and printed publications amended. Hopefully, although the form of the new legislation would be much more straightforward than that of the existing legislation, in substance it should be not too dissimilar, so the exercise of

[50] Standing Orders of the House of Commons, SO 60.
[51] Consolidation of Enactments (Procedure) Act 1949, s 2; Standing Orders of the House of Commons, SOs 58, 140.

rewriting guidance would be not too onerous. That process would also be greatly assisted if the draft Bills were made available at an early stage.

It would of course be possible to introduce the new Bills in several stages, as was done with the TLR programme. That has the disadvantage of necessitating much more complex transitional provisions, although the advantage of resulting in a more extended period in which to update guidance. As noted above, that might be appropriate in relation to the statutory code relating to the acquisition of land, leading to the programme being conducted in two phases. Otherwise, however, it would seem to be preferable to do it in one operation as far as possible.

VI. The Outcome

As an indication of one possible pattern that might emerge from such an exercise, it would seem that 43 statutes could be repealed in whole, and a further 14 in part – as listed in Table 1 – and in their place could be enacted nine new statutes, as set out in Table 2.

Table 2: Planning and development law as it could be

1. ***The Town and Country Planning Act 2019***

   National and local planning authorities; national policy statements; development plans; neighbourhood plans.

2. ***Natural Environment Act 2019***

   Natural England; national parks; areas of outstanding natural beauty; nature reserves; trees; hedgerows.

3. ***Heritage Protection Act 2019***

   Historic England; world heritage sites; ancient monuments; listed buildings; conservation areas.

4. ***Promotion of Development Act 2019***

   New towns; development corporations; enterprise zones.

5. ***Regulation of Development Act 2019***

   Definition of development; seeking development consent (planning permission / listed building consent); remedies (appeals, purchase notices); major infrastructure projects; enforcement; special controls (minerals, advertisements, caravans).

6. ***Infrastructure Funding Act 2019***

   Community infrastructure levy.

7. ***Rights of Way and Access to Land Act 2019***

   Rights of way; access to open land; village greens.

8. ***Acquisition of Land Act 2019***

   Acquisition of land by agreement; compulsory purchase; blight; minerals; compensation.

9. ***Planning and Development (Miscellaneous Provisions) Act 2019***

   Definitions; application to the Crown, statutory undertakers, local authorities; court challenges; repeals; transitional provisions.

The result of an exercise along these lines would be a huge simplification and clarification of an important area of statute law, which would yield significant savings in time and money on the part of professionals, public authorities and members of the general public.