



Llywodraeth Cymru
Welsh Government

Report on the implementation of Law Commission proposals

February 2017

Presented to the National Assembly for Wales
pursuant to Section 3C of the Law Commissions Act 1965
as inserted by Section 25 of the Wales Act 2014

Contents

Introduction

Scope of the report

Proposals that have been implemented

Proposals that have not yet been implemented

Decisions taken not to implement

Introduction

I am pleased to present this report which relates to the implementation of Law Commission proposals. This is the second annual report to be presented following the passing of the Wales Act 2014.

The Act amended the Law Commissions Act 1965 to place a duty on the Welsh Ministers to report to the National Assembly for Wales each year on the extent to which Law Commission proposals relating to Welsh devolved matters have been implemented by the Welsh Ministers. This report covers the period from 17 February 2016 to 16 February 2017.

The Law Commission's Twelfth Programme of Law Reform included, for the first time in its history, projects that related solely to Welsh devolved matters. During the year the Law Commission published their final report on the Form and Accessibility of the Law Applicable in Wales. This was the culmination of a two year project initiated by the Welsh Government, but which involved extensive consultation with civic society in Wales.

The Twelfth Programme also included a project on planning and development control in Wales. I look forward to the outcome of that review, as well as the final reports of other Law Commission projects that relate to Welsh devolved matters, which will lead to the implementation of further proposals in the future.

This report provides further demonstration of the importance with which the Welsh Government regards the proposals of the Law Commission.

**The Right Honourable Carwyn Jones AM
First Minister of Wales**

16 February 2017

Scope of the report

1. Section 3C of the Law Commissions Act 1965, as inserted by Section 25 of the Wales Act 2014, places a duty on the Welsh Ministers to report to the National Assembly for Wales each year on the extent to which Law Commission proposals have been implemented by the Welsh Government.
2. This is the second annual report to be published by the Welsh Ministers under the Act. The report covers the period from 17 February 2016 to 16 February 2017.
3. As stipulated by the Act, the report covers Law Commission proposals relating to Welsh devolved matters that have been implemented by the Welsh Government during the year, and proposals relating to Welsh devolved matters that have not been implemented, including plans for implementation and decisions taken not to implement proposals.
4. The report only covers the reports of the Law Commission of England and Wales as far as they relate to Welsh devolved matters.

Proposals that have been implemented

Reform of the Rented Housing Sector

5. The Renting Homes (Wales) Act 2016 received Royal Assent on 18 January 2016, and was based on a draft Bill provided by the Law Commission following the completion of their project into the reform of the rented housing sector, and subsequent report on Renting Homes in Wales.
6. The Act improves and simplifies the arrangements for renting homes, replacing many different and complex pieces of legislation with one main piece of legislation. The Act also replaces the huge number of different types of tenancies and licences with just two types of contract – one for the private rented sector and one for the social rented sector. Work is in hand to draft and consult on the substantial amount of secondary legislation which is required to be made before the Act can be implemented.

Adult Social Care

7. The Social Services and Well-being (Wales) Act 2014 implements the majority of the recommendations made in the 2011 Law Commission report on Adult Social Care. The Act received Royal Assent in May 2014 and came into force on 6 April 2016.

Regulating Health and Social Care Professionals

8. The Regulation and Inspection of Social Care (Wales) Act 2016 was informed by the Law Commission 2014 report and draft bill on the regulation of health workers in the UK and social care workers in England. The Law Commission report provided significant evidence and guidance for the development of workforce regulation in the Act, which improves the quality of care and support in Wales and strengthens protection for citizens.
9. The 2016 Act, which received Royal Assent on 18 January 2016, will come into force and be implemented in three stages, commencing on 3 April 2017 in relation to the reconstitution, broadening of the remit and renaming of the Care Council for Wales as Social Care Wales and the regulation of the social care workforce. The following two stages, commencing in April 2017 and April 2018 respectively, will address the regulatory regime for care and support services and other related matters.

Proposals that have not yet been implemented

The Form and Accessibility of the law applicable in Wales: Advisory project

10. The Law Commission published their report on the form, presentation and accessibility of the law relating to Wales on 29 June 2016. The report made a number of recommendations to the Welsh Government that seek to secure improvements in those aspects of both the existing law and future legislation in Wales.
11. The Welsh Government issued its interim response on 12 December 2016. The final response will be due by 29 June 2017. The Welsh Government has also committed to undertaking a pilot programme during 2017 on consolidation, codification and better publication of the law in Wales. The pilot will look at different options for what a 'Code' amounts to and consider the benefit of such initiatives to stakeholders and society more generally.

Current Law Commission Projects

12. A number of Law Commission projects relating to devolved Welsh matters are currently underway. The proposals that come from these projects will therefore be the subject of future reports and are set out below for information.

Simplification of Planning Law in Wales

13. This project is reviewing the law relating to town and country planning in Wales and will make recommendations on the terms of simplified and consolidated planning legislation, having regard to the current programme of reform through the Planning (Wales) Act 2015.
14. A scoping paper setting out the Commission's initial ideas on the parameters of the project was published on 30 June 2016, where views were sought by 30 September 2016. The responses to the consultation are currently being considered and will inform the Commission's substantive proposals, which are due to be published for consultation during summer 2017.

Electoral Law

15. The Law Commissions of England and Wales, Scotland and Northern Ireland are currently reviewing electoral law and will be making recommendations for change. The aims of the project are to consolidate the many existing sources of electoral law, and modernise and simplify the law, making it fit for elections in the 21st century.
16. The Commission published an Interim Report setting out its recommendations in February 2016. The UK Government has announced that pressures on the Parliamentary timetable currently make it impossible for them to bring forward primary legislation to reform electoral law. The Law Commission and the UK Government's Cabinet Office are considering alternative ways in which the Commission's recommendations could be implemented.
17. The Wales Bill has completed its passage through Parliament and will give to the National Assembly for Wales legislative competence in respect of Assembly and Welsh local government elections. It will fall to the Welsh Government and the National Assembly to consider, and if appropriate give effect in legislation to, the report's recommendations as they relate to Assembly and local government elections in Wales.

Mental Capacity and Deprivation of Liberty

18. The UK Government's Department of Health has sponsored a Law Commission project on the law of mental capacity and deprivation of liberty. The project relates to mental capacity law in England and Wales, and it is the Welsh Ministers who make regulations in respect of Wales under the Deprivation of Liberty Safeguards (DoLS). Legislative competence for mental health is also devolved to Wales.
19. The Law Commission published a consultation paper on 7 July 2015 which has now closed. A final report, including recommendations and a draft Bill was expected in 2016. The Law Commission gave notice in December 2016 of the postponement of the publication of the final report and draft Bill. This is now expected to be published in March 2017.

Decisions taken not to implement

Wildlife Law

20. The project considered the framework of the law relating to the conservation, control, protection and exploitation of wildlife in England and Wales. The project did not consider changes to current policy except where these were thought to be needed to improve compliance with European Directives. The Law Commission published its final report and draft Bill in November 2015. The report contained 287 recommendations, many of a technical and complex nature.
21. The Welsh Government considered the Law Commission's proposals in the context of both the passage of the Environment (Wales) Act 2016, which received Royal Assent in March 2016, and the outcome of the EU referendum in June 2016. In light of both, the Welsh Government has decided not to implement the recommendations of the Law Commission at this time, however both the report and draft Bill will be used as part of the underpinning evidence to inform future legislative opportunities to protect wildlife in Wales
22. The Law Commission's project has already led to the introduction of Species Control Agreements and Species Control Orders in order to control invasive non-native species in Wales and England. Powers for these were introduced in April 2015 under Part IV of the UK Infrastructure Act 2015.