



Llywodraeth Cymru
Welsh Government

Report on the implementation of Law Commission proposals

February 2020

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

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Introduction

I am pleased to present this report on the Welsh Ministers' implementation of Law Commission proposals. This is the fifth annual report to be presented following the passing of the Wales Act 2014. It covers the period from 16 February 2019 to 14 February 2020.

The Law Commissions Act 1965, as amended by the Wales Act 2014, places the Welsh Ministers under a duty to report to the National Assembly for Wales each year on the extent to which they have implemented Law Commission proposals relating to Welsh devolved matters.

Progress has been made over the last twelve months on a range of issues that have been the subject of Law Commission recommendations. We have taken significant steps in relation to improving the form and accessibility of Welsh law, including through the Legislation (Wales) Act 2019 which places duties on Welsh Ministers and the Counsel General. We have consulted on a White Paper on improving public transport in Wales, which took account of the Law Commission's recommendations about taxi and private hire services. We published an interim response to the Law Commission's review of planning law in Wales, and are undertaking detailed consideration of the full set of recommendations. We continue to work closely with UK Government departments on the secondary legislation and the Code of Practice for the operation of Liberty Protection Safeguards to ensure the new procedural arrangements for authorising care and treatment that amount to a deprivation of a person's liberty accurately reflect the legislative landscape and health and social care sector in Wales.

This report also provides information about how we have engaged with the Law Commission on its current and future projects, including leasehold and commonhold reform.

The Welsh Government regards the proposals of the Law Commission with great importance, as demonstrated by the progress and activity highlighted in this report.

Mark Drakeford AM
First Minister of Wales

14 February 2020

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 annually to the National Assembly for Wales on the extent to which Law Commission proposals have been implemented that year.
2. This is the fifth annual report to be published by the Welsh Ministers under the Act. The report covers the period from 16 February 2019 to 14 February 2020.
3. As stipulated by the Act, the report covers Law Commission proposals relating to Welsh devolved matters that have been implemented 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 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

The Form and Accessibility of the Law Applicable in Wales

5. The Welsh Government was pleased to be able to accept, or accept in principle, all but one of the Law Commission's recommendations in its 2016 report on the form, presentation and accessibility of the law relating to Wales. Implementation of the recommendations began almost immediately, and most notably included the Counsel General bringing forward legislation intended to make Welsh law more accessible, clear and straight forward to use.
6. The Legislation (Wales) Act 2019 makes provision about the interpretation and operation of Welsh legislation (a recommendation of the Law Commission's report). The Act also requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law. To inform the process of making Welsh law more accessible the Act requires the Law Officer for Wales, the Counsel General, to keep the accessibility of Welsh law under review. This requires a focus on the law as a collective, be that the law on a particular subject or the statute book as a whole. It also means that the Counsel General's obligation to keep the accessibility of Welsh law under review will be relevant when the Welsh Ministers are considering whether to propose new legislation.
7. The Act requires the Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Assembly term (in other words, the period from the Assembly being formed after a Welsh general election to dissolution prior to the following general election). Although the specific content of a programme will be a matter for the Welsh Ministers and the Counsel General at the time, each programme must make provision for measures that are intended to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and to facilitate use of the Welsh language. Consolidation and codification of Welsh law is at the heart of the Law Commission's report, and is central to the task of making the law more accessible.
8. The first programme required under the Act will be prepared by the next Government (following the Assembly elections in 2021), but this Government has already begun the detailed work necessary to consolidate the law on the historic environment and on planning (see also paragraphs 17 to 19). The Government has also consulted on its proposals for the classification, consolidation and codification of Welsh law (more generally), and how best to enhance communication about the law. The findings from the consultation, which closed on 31 January, will inform the development of the first programme to be brought forward.

9. Future reporting on the Government's delivery of its programme to improve the accessibility of Welsh law, which builds on the recommendations of the Law Commission's report, will be through an annual report to the Assembly (as required under the Legislation (Wales) Act 2019).

Proposals that have not yet been implemented

Electoral Law

10. As part of its 11th Programme of Law Reform, the Law Commission set out to streamline the legislative framework governing all elections and referendums, and to simplify and modernise the law governing the conduct of elections and referendums. The Law Commissions of England and Wales, Scotland and Northern Ireland published a joint interim report in February 2016. The Commissions' final report is due to be published in March 2020.
11. Following the legislative devolution of National Assembly and local election in Wales in 2017, Ministerial functions in this area were devolved in April 2018. Since then a wide ranging electoral reform agenda has been pursued by both the Welsh Government and National Assembly for Wales Commission. This has included the extension of the franchise, changes to disqualification regimes and reform of the annual canvass.
12. The Law Commission's recommendation around the consolidation of electoral law has been considered as part of the Welsh Government's electoral reform agenda and continues to inform future work programmes in this area.
13. In addition, the electoral reform agenda in Wales will follow the principles set out in the Legislation (Wales) Act 2019 which, amongst other provisions, places a duty on Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Assembly term. Each programme should make provision for measures that are intended to consolidate and codify Welsh law, maintain codified law and to facilitate use of the Welsh language.

Mental Capacity and Deprivation of Liberty

14. In March 2017, the Law Commission published a report and draft Bill recommending that the Deprivation of Liberty Safeguards (DoLS) be replaced with a replacement scheme. The UK Government introduced a Bill to amend the Mental Capacity Act in the summer of 2018, which received Royal Assent on 16 May 2019. Whilst not named on the face of the Act, the new procedural arrangements for authorising care and treatment that amount to a deprivation of a person's liberty are referred to as the Liberty Protection Safeguards (LPS).
15. The Welsh Government continues to work closely with UK Government departments on this reserved subject matter to ensure that the secondary legislation and the Code of Practice for the operation of the LPS accurately reflects the legislative landscape and health and social care sector in Wales. Both regulations and draft Codes of Practice will be subject to public consultation during 2020 and it is anticipated that there will be a 12

month transition period between the current Deprivation Liberty Safeguards and full implementation of LPS. The work programme in relation to provisions in the Act that confer regulation-making powers for the Welsh Ministers will also align with the UK Government's timescales, alongside the development of strategic implementation and preparation work with the sector.

16. The UK Government announced in 2019 that it will formally respond to the Independent Review of the Mental Health Act 1983 report in the form of a White Paper. The Welsh Government will carefully consider the UK Government's proposals as well as consultation responses to consider the position for Wales, including any proposals that seek to address issues relating to the interface between the Mental Capacity Act 2005 and the Mental Health Act 1983.

Planning Law in Wales

17. The Law Commission's report on planning law in Wales was published and submitted to the Welsh Ministers for consideration in November 2018. It sets out the Commission's detailed review on this area of law with recommendations on simplifying and consolidating the legislation.
18. In May 2019 the Welsh Government issued an interim response to the Report, which focused on the core conclusions set out in Part 1 of the consultation paper and of the Final Report. In particular it sets out the Government's response to the Law Commission's views on the need to simplify and consolidate planning law, the case for a planning code and the scope of the initial consolidation exercise. It highlights the Welsh Government's commitment to taking forward this project, with work already started on a Planning Consolidation Bill.
19. Work is at an advanced stage in formulating the detailed response to the Report, which will focus on responding to the 192 recommendations set out in Part 2 of the Report. The response will be issued later this spring.

Public Services Ombudsman for Wales

20. The Law Commission published a report on public services ombudsmen in 2011 which included references to the Public Services Ombudsman for Wales. Subsequently, the Assembly's Finance Committee carried out an inquiry, including a period of consultation, in relation to the extension of the Ombudsman's powers. The Public Services Ombudsman (Wales) Act 2019 was passed by the National Assembly for Wales on 20 March 2019 and received Royal Assent on 22 May 2019.
21. Some of the main changes made to the powers of the Ombudsman by the Act are:
 - a power for the Ombudsman to carry out "own initiative investigations";

- improved access to the Ombudsman through the acceptance of complaints made other than in writing;
- the power to investigate private healthcare pathways in certain circumstances; and
- a power for the Ombudsman to publish model complaints handling procedures.

22. The Act reflects most, but not all of the matters considered by the Committee's inquiry. In relation to the Law Commission's recommendations, paragraph 4.5 of the Explanatory Memorandum to the Act states that "*the Law Commission's recommendations included improving access to the Ombudsman by modifying the 'statutory bar', creating a new power to 'stay' an application for judicial review and allowing the Ombudsman to refer a point of law to the courts. In respect of these, the Committee recommended that the Welsh Government explore these issues with the UK Government as part of future devolution discussions.*"

Taxi and Private Hire Services

23. The Law Commission published its report on taxi and private hire services on 23 May 2014. The recommendations were considered as part of the development of the Welsh Government's White Paper 'Improving Public Transport', published in December 2018. This is available at: https://gov.wales/sites/default/files/consultations/2018-12/improving-public-transport_0.pdf

24. The White Paper focused on four proposals:

- The creation of National Standards to address the variation in taxi and private hire vehicle (PHV) standards across Wales' twenty two local authorities;
- The extension of enforcement powers to allow local authority officers to take effective enforcement against any taxi/ PHV operating in their area;
- The establishment of effective information sharing protocols for the purposes of safeguarding; and
- The redirection of taxi and PHV licensing functions away from local authorities and towards a Joint Transport Authority (JTA).

25. The consultation ran until 27 March 2019. The Welsh Government published the response to the consultation in July 2019. This is available at: <https://gov.wales/sites/default/files/consultations/2019-08/improving-public-transport-summary-of-response.pdf>

26. The consultation responses indicated that there was strong support for national standards, improved enforcement powers and information sharing, but there was some opposition to the JTA proposals. There was also consistent feedback that the proposals did not go far enough to address the current challenges faced by the taxi and PHV industry and regulators.

27. As a result, the Welsh Government is working in conjunction with the Welsh Local Government Association to develop these proposals further. This will include production of a plan recommending a number of non-legislative reforms in the short term before any possible legislative change.
28. The Welsh Government aims to update Wales' taxi and PHV licensing system to make it fit for modern Wales. It is envisaged that this will involve creation of a consistent standard to be applied across Wales that promotes safety, contributes to a cleaner environment, improves the customer experience and is accessible by all.
29. Areas of work being considered during this policy development include:
- The provision of driver training including areas such as child and vulnerable adult safeguarding, disability awareness and customer service;
 - National standards for drivers, vehicles and operators that are focused on safety;
 - Improved enforcement powers;
 - Improved information sharing between local authorities and the development of a national register;
 - The impact of licensed vehicles on the environment;
 - Problems of cross border hire;
 - Promoting equality by ensuring that all customers have access to suitable vehicles; and
 - Improving the customer experience.
30. During the development of the proposals there will be engagement with relevant stakeholders including representatives of the taxi and PHV industry.

Current and Future Law Commission Projects

Devolved Welsh Tribunals

31. As part of the Law Commission's 13th Programme of Law Reform, the Commission and the Welsh Government have agreed to embark on a Wales-only project on the law relating to devolved Welsh tribunals. This is expected to commence in early 2020.

Leasehold and Commonhold Reform

32. The Welsh Government has engaged with the Law Commission on their projects about leasehold enfranchisement; commonhold; and the right to manage.
33. Following consultation exercises in late 2018 and early 2019, the Commission is considering its recommendations, and is expected to publish final reports in Spring 2020. The Welsh Government is paying close attention to the Law Commission projects on leasehold and commonhold reform and will consider their findings once reported.
34. Further information on the Law Commission projects can be found at: <https://www.lawcom.gov.uk/project/residential-leasehold-and-commonhold/>

Decisions taken not to implement

35. The Welsh Government has taken no decisions not to implement a Law Commission report during this reporting period.