



Llywodraeth Cymru
Welsh Government

Report on the implementation of Law Commission proposals

February 2019

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 fourth annual report to be presented following the passing of the Wales Act 2014.

The Act amended the Law Commissions Act 1965 to place the Welsh Ministers under a duty 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 2018 to 15 February 2019.

This report provides Members with an update about a number of areas that relate to Law Commission proposals. Much progress has been made over the last twelve months, including the introduction of the Legislation (Wales) Bill which takes forward proposals contained in the report on the Form and Accessibility of the Law Applicable in Wales. Last December the Law Commission published its final report 'Planning Law in Wales' and we are giving careful consideration to the recommendations.

This report also provides information about current and future Law Commission projects. The Welsh Government has engaged with the project about leasehold and commonhold reform. We have also agreed with the Law Commission a Wales-only project to consider the law relating to devolved Welsh Tribunals, which will begin later this year.

The progress and activity highlighted in this report provides further demonstration of the importance with which the Welsh Government regards the proposals of the Law Commission.

Mark Drakeford AM
First Minister of Wales

15 February 2019

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 fourth annual report to be published by the Welsh Ministers under the Act. The report covers the period from 17 February 2018 to 15 February 2019.
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

5. The Welsh Government has not completed the implementation of any Law Commission proposals during this reporting period.

Proposals that have not yet been implemented

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

6. 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.
7. The Welsh Government issued its final response on 19 July 2017. The report provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the laws of Wales are more accessible. The Welsh Government was able to accept, or accept in principle, all except one of the recommendations for the government. The Welsh Government has already begun to implement these recommendations, in particular through the introduction of the Legislation (Wales) Bill which is currently at Stage 1 proceedings in the National Assembly.

Mental Capacity and Deprivation of Liberty

8. In March 2018, the UK Government published its final response to the Law Commission's sponsored report and recommendations (March 2017) to reform the legal procedures given in the Mental Capacity Act for authorising care and treatment arrangements that amount to a deprivation of a person's liberty. The UK Government stated that it broadly agreed with the new Liberty Protection Model (replacing the current Deprivation of Liberty Safeguards (DoLS)) proposed by the Law Commission and that it would bring forward legislation when parliamentary time allowed.
9. The Joint Committee on Human Rights also published their report: *The Right to Freedom and Safety: Reform of the Deprivation of Liberty Safeguards* in June 2018, calling for urgent reform of the current legislation.
10. The UK Government introduced a Mental Capacity (Amendment) Bill into the House of Lords on 3 July 2018. The Bill as introduced was broadly based on the Law Commission's recommendations with some notable omissions and new provisions. The subject matter of the Mental Capacity Act 2005 is reserved under the Government of Wales Act 2006. A legislative competence assessment of the Bill as introduced concluded that it did not fall within the legislative competence of the National Assembly.

11. Since its introduction into the Lords, multiple amendments have been made, including conferring a new function on the Welsh Ministers to make specific regulations. The Welsh Government has assessed each of the relevant amendments as the Bill has progressed and concluded that they do not fall within the National Assembly's legislative competence. This process will continue to the conclusion of the Bill. The Welsh Government is also actively working with relevant UK Government departments to make sure that the Bill aligns correctly with relevant legislation in Wales, in particular the Social Services and Well-Being (Wales) Act 2014, the Regulation and Inspection of Social Care (Wales) Act 2016 and the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
12. The Mental Capacity (Amendment) Bill is expected to receive Royal Assent by spring 2019. This will be followed by a 12 month period to develop the necessary secondary legislation and statutory Code of Practice, and a further 12 month transitional implementation period (up to spring 2021).
13. The pending judgement of the Supreme Court's hearing of a case relating to a child D, (UKSC 2018/0064) could also have bearing on some of the provisions of the Bill in relation to 16 and 17 year olds.
14. The UK Government also commissioned an Independent Review to the Mental Health Act 1983 in autumn 2017. The Review was given a subsequent remit to consider the interface between the Mental Capacity Act/DoLS and the Mental Health Act 1983, as proposed in the Law Commission's report. The Independent Review's Final report was published in December 2018, making 154 recommendations, many of which call for a change in legislation. The UK Government has stated that it will give a formal response to the review's recommendations in the New Year before bringing forward new legislation. The Welsh Government is fully considering the implications of the recommendations for Wales as they apply to both the Mental Capacity Act 2005 and the Mental Health Act 1983.

Planning Law in Wales

15. This project reviews the law relating to town and country planning in Wales. It provides recommendations on simplifying and consolidating planning legislation, with the aim of replacing and integrating existing primary legislation to form a new consolidated Act or Acts as part of a Planning Code for Wales.
16. Informed by the responses to two consultation exercises and a comprehensive review of the legislation and relevant case law, the Law Commission finalised their recommendations with the publication of their Final Report 'Planning Law in Wales' on 3 December 2018. The report is available at:

<https://www.lawcom.gov.uk/project/planning-law-in-wales/>

17. Detailed consideration is now being given to approximately 190 recommendations set out in the report and the supporting evidence for reforms to achieve the simplification and consolidation of this legislation. In accordance with the protocol agreed with the Law Commission, an interim Government response to the report will be provided within 6 months of its publication (before 2 June 2019), with a detailed response to be provided within 12 months (before 3 December 2019).

Current and Future Law Commission Projects

13th Programme of Law Reform – devolved Welsh tribunals

18. The Law Commission published its 13th Programme of Law Reform on 14 December 2017. At the time of publication, the Commission and the Welsh Government were in discussions to seek to identify a Wales-only law reform project, but had not at that point settled upon a suitable issue for such a project. However, the Commission and the Welsh Government have subsequently agreed that the subject of a Wales-only project will be the law relating to devolved Welsh tribunals.

19. Existing rules and procedures for the various devolved Welsh tribunals are complicated and inconsistent, having developed piecemeal from a wide range of different legislation. Much of this legislation was developed before devolution, and also before tribunals were recognised as involving exercise of the judicial function of the state, rather than the executive function. Further, the legislation does not take into account the role of the President of Welsh Tribunals, introduced by the Wales Act 2017. The Commission has therefore agreed that it will undertake a project to reform the law in this area, and expects to begin in late 2019. More details can be found at:

<https://beta.gov.wales/written-statement-welsh-tribunals-law-commission-project>

Leasehold and commonhold reform

20. The Welsh Government has engaged with the Law Commission on their project about residential leasehold and commonhold reform. The project will initially examine three key areas:

- Leasehold enfranchisement, including lease extensions and the purchase of the freehold of leased properties. It will also consider how the processes can be made easier, quicker and more cost effective;
- Commonhold, which provides an alternative form of ownership to residential leasehold. The Commission will review the current commonhold legislation with a view to improving market confidence and workability;
- Right to Manage which was introduced to give leaseholders control over the management of their buildings. The Commission will review the existing legislation with a view to making the procedure simpler, quicker and more flexible.

21. This work involves a significant element of stakeholder engagement and consultation. The Commission's consultation on enfranchisement reform closed in January 2019, and its current consultations on commonhold and the right to manage will close in March and April 2019 respectively.

22. Further information on the Law Commission project can be found at:

<https://www.lawcom.gov.uk/project/residential-leasehold-and-commonhold/>

Decisions taken not to implement

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