



Llywodraeth Cymru  
Welsh Government

# Report on the implementation of Law Commission proposals

February 2021

Presented to Senedd Cymru 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 sixth annual report to be presented following the passing of the Wales Act 2014. It covers the period from 15 February 2020 to 14 February 2021.

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

This report provides updates on the progress made over the last twelve months on a range of issues that have been the subject of Law Commission recommendations. We issued our detailed final response to the Law Commission's "Planning Law in Wales – Final Report". This followed and supplemented our interim response, by setting out our position on each of the 192 recommendations made by the Law Commission to simplify and consolidate the legislation on all aspects of the planning system. We have made good progress in taking forward Law Commission proposals in relation to electoral reform, mental capacity and deprivation of liberty, taxi and private hire services, and wildlife law.

This report also provides information about how we are engaging with the Law Commission on its current and future projects. This includes important work relating to coal tip safety legislation, devolved Welsh tribunals and automated vehicles.

This update and the progress noted demonstrates the importance the Welsh Government places on Law Commission proposals.

**Mark Drakeford AM**  
**First Minister of Wales**

**15 February 2021**

## **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 Senedd Cymru on the extent to which Law Commission proposals have been implemented that year.
2. This is the sixth annual report to be published by the Welsh Ministers under the Act. The report covers the period from 15 February 2020 to 14 February 2021.
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**

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**

### **Planning Law in Wales**

6. In November 2020 the Welsh Government issued its detailed final response to the Law Commission's "Planning Law in Wales – Final Report". It follows and supplements the Government's interim response published in May 2019, by setting out the Welsh Government's position on each of the 192 recommendations made by the Law Commission to simplify and consolidate the legislation on all aspects of the planning system. The majority of the recommendations have been accepted by the Welsh Government.
7. As stated in both responses, the Welsh Government acknowledges the importance of, and is committed to, bringing forward a Planning Consolidation Bill to achieve the consolidation and simplification of this significant area of law. Such a Bill is anticipated to be the main delivery mechanism for the majority of the recommendations that have been accepted.
8. Given the significant benefits it will bring to all stakeholders and the urgent need for consolidation demonstrated by the Report, work will now focus and continue on the production of the Bill, with the Law Commission continuing to work with the Welsh Government. It will also enable the Bill to form an important part of the formal programme to improve the accessibility of Welsh law required by the Legislation (Wales) Act 2019, which will be a matter for the Government in the next Senedd term.

### **Electoral Law**

9. 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 Commission of England and Wales, along with the Scottish Law Commission published their final report in March 2020.
10. The Welsh Government has continued with work to implement the changes brought about by the Senedd and Elections (Wales) Act 2020 and the 2021 Senedd election will be the first to be held with the extended franchise.
11. The Law Commission's recommendation around the consolidation of electoral law has continued to be considered as part of the Welsh Government's electoral reform agenda and to inform future work programmes in this area.
12. One of the pieces of enabling legislation for Senedd elections, the National Assembly for Wales (Representation of the People) Order 2007, has been amended a number of times. The Welsh Government is committed to

making the law in Wales accessible and easy to navigate and therefore work is in hand to consider reviewing the Order with a view to replacing it with a new consolidated Order.

13. The Local Government and Elections (Wales) Bill was agreed by the Senedd in November 2020 and received Royal Assent in January 2021. This legislation makes changes to local government electoral arrangements and has consolidated some disqualification provisions as they relate to Wales in the Local Government Act 1972. The local government elections are due to take place in Wales in May 2022. Given the extensive changes presented by this legislation it has been agreed that the rules governing both principal council and town and community council elections in Wales will be re-made in their entirety. This will consolidate existing law, incorporate recent changes and will produce two single pieces of legislation governing local elections in Wales.

### **Mental Capacity and Deprivation of Liberty**

14. In January, 2021 the UK Government published a White Paper setting out proposals for reform of the Mental Health Act 1983. Given that the Act has application in both England and Wales, the findings of the proposals set out in this White Paper also need to be carefully considered in the context of how the Act currently operates alongside specific legislation, mental health services and systems in Wales. To do this, we will be working with the UK Government to ensure that this consultation will also help inform policy decisions in Wales.
15. Whilst consultation responses to the White Paper will be received directly by the UK Government, responses will also be shared with the Welsh Government. On reserved matters, all responses from England and Wales will be fully considered by the UK Government. On devolved matters, both Governments will consider all responses, however, feedback from Wales will not be counted or addressed separately as part of the UK Government's consultation response.
16. The Welsh Government will continue to engage with the UK Government on the proposals set out in the White Paper as it considers appropriate next steps for Wales and develops its own response to the Review. We will do this in close co-operation with our mental health third sector partners and statutory partners in the field.
17. 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).

18. 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.
19. In July 2020, the UK Government confirmed that it is planning to implement the new Liberty Protection Safeguards in April 2022 and plans to consult on draft regulations for England and the draft LPS code of practice for England and Wales in spring 2021. To support the implementation of the safeguards in Wales and to align with the planned implementation date of April 2022, the Welsh Government will consult on draft regulations for Wales in spring 2021. These draft regulations will focus on monitoring and reporting on the safeguards; who can undertake assessments and determinations; Independent Mental Capacity Advocates (IMCAs); and the role and appointment of Approved Mental Capacity Advocates (AMCPs). We are also planning to consult on a draft Workforce and Training Strategy for LPS for Wales. Ahead of formal consultation, officials have established cross-sector stakeholder groups to inform and co-produce the draft regulations and codes of practice.

### **Taxi and Private Hire Services**

20. The Welsh Government's annual report on the implementation of Law Commission proposals 2019-20 referred to the consultation on Taxis and Private Hire Vehicle (PHV) legislation. The report makes reference to the consultation undertaken by the Welsh Government in 2017. Subsequently, the Welsh Government published the 'Improving Public Transport' White Paper in 2018. The consultation focused on four proposals:
1. The creation of National Standards to address the variation in taxi and PHV standards across Wales' twenty two local authorities;
  2. The extension of enforcement powers to allow local authority officers to take effective enforcement against any taxi/PHV operating in their area;
  3. The establishment of effective information sharing protocols for the purposes of safeguarding; and
  4. The possible redirection of taxi and PHV licensing functions away from local authorities and towards a Joint Transport Authority (JTA).
21. The responses to the consultation in Spring 2019 highlighted the wide range of stakeholder views about how the legislation underpinning the operation of the taxi and PHV industry should be improved and the views expressed were not consistent across the industry. It was clear that there is a considerable amount of work still required to bring forward legislation that addresses the improvements needed. The First Minister therefore announced that provisions relating to Taxis would not be included in the



proposed public transport Bill<sup>1</sup> this Senedd term, in order to work with the Taxi and PHV industry to develop legislative proposals to bring Taxi and Private Hire Vehicle regulation into the 21st century.

22. The Welsh Government has undertaken work with the Welsh Local Government Association and local authorities to develop a number of non-legislative solutions to be considered ahead of legislative change in order to address some of the problems associated with the current licensing regime. A 'Guide to Harmonization of Taxi/PHV Licensing' will be published shortly and contains a number of recommendations to local authorities that can be adopted on a voluntary basis to provide a more consistent approach to licensing across Wales.
23. Decisions on the development and introduction of a White Paper and Bill in the next Senedd term will be a matter for the next Government.

### **Leasehold and Commonhold Reform**

24. The Welsh Government welcomed the publication of the Law Commission's final reports in July 2020 on Enfranchisement, the Right to Manage and Commonhold as a significant step towards much needed reform. Once the Minister for Housing and Local Government has had the benefit of considering shortly forthcoming research into the scale and scope of leasehold issues experienced in Wales, the Minister will set out how the Welsh Government intends to address those issues identified in the Welsh Government response to the Law Commission's recommendations.

### **Termination of Tenancies for Tenant Default and Making Land Work: Easements, Covenants and Profits à Prendre**

25. The first of these Law Commission projects examined the means whereby a landlord can terminate a tenancy because the tenant has not complied with his or her obligations. The other project examined the general law governing Easements, Covenants and Profits à Prendre. The Law Commission report recommended reforms to modernise and simplify the law underpinning these rights, making it fit for the 21st century and introducing a modern registration system. The UK Government announced in the Housing White Paper published on 7 February 2017 that: "The Government also intends to simplify the current restrictive covenant regime by implementing the Law Commission's recommendations for reform and will publish a draft Bill for consultation as announced in the Queen's Speech". The Welsh Government will be giving careful consideration to the Law Commission's updated reports and to the revised UK Government Bill on the law of property and this will help inform the Welsh Government's course of action in respect of legislative options.

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<sup>1</sup> The Bus Services (Wales) Bill was subsequently withdrawn from the Senedd in 2020 in light of the need to reprioritise resources in response to the Covid-19 pandemic.

## Wildlife Law

26. As part of its 11th Programme of Law Reform, the Law Commission set out to consider the law relating to the conservation, control, protection and exploitation of wildlife in England and Wales. The Law Commission published its first report, *Wildlife Law: Control of Invasive Non-native Species* in 2014 recommending the introduction of control agreements and orders to compel landowners or occupiers to carry out control or eradication operations. Some of these recommendations were given effect in the Infrastructure Act 2015.
27. The Law Commission published their final Wildlife Law report in 2015 proposing a single statute bringing together most of the law relating to wildlife as well as making specific proposals on the most appropriate way of transposing EU directives and enforcement of wildlife legislation, including both criminal offences and civil sanctions, and appeals.
28. The Welsh Government considered the Law Commission's proposals in the context of both the passage of the Environment (Wales) Act 2016 and the outcome of the EU referendum in June 2016. In light of both, the Welsh Government decided not to implement the Law Commission's recommendations at that time, instead indicating both the report and draft Bill would be used as part of the underpinning evidence to inform future legislative opportunities to protect wildlife in Wales.
29. Over the last two years, the Welsh Government has taken steps to convert the majority of EU law into domestic law and preserve and correct domestic law that implements EU obligations. This will provide a firm foundation as we consider the way forward on new legislative opportunities to protect wildlife in Wales.
30. During this period, the Welsh Government has also taken steps that implement some of the Law Commission's specific proposals relating to Invasive Non-native Species. The Invasive Alien Species (Enforcement and Permitting) Order 2019, made by the Parliamentary Under Secretary of State for Defra and Minister for Environment, Energy and Rural Affairs came in to force in December 2019. This puts in place enforcement, licensing and permitting regimes for those species listed as Invasive Alien Species of Union concern under EU Regulation 1143/2014. Similar to the Law Commission's cross-cutting proposals the Order provides for both criminal and civil sanctions, sets penalties consistent with similar penalties contained in existing wildlife legislation, contains provisions relating to offences by companies and partnerships, introduces standard licensing requirements and make changes where some existing provisions overlap with the controls set out in the Order.
31. In the 2015 Report, the Law Commission took the view that, in the future, the operation and inspection of snares may benefit from additional regulations prescribing how relevant snares should be operated and

inspected. The Welsh Government White Paper published in December 2020 includes proposals to include order making powers related to the sale and use of snares through the introduction of an Agriculture (Wales) Bill during the sixth Senedd term.

## **Current and Future Law Commission Projects**

### **Devolved Welsh Tribunals**

32. As part of the Law Commission's 13th Programme of Law Reform, the Commission and the Welsh Government agreed to embark on a Wales-only project on the law relating to devolved Welsh tribunals. The Law Commission's Wales-only project has commenced and is progressing well. Several meetings with stakeholders have been undertaken and the project is now in its consultation stage. The final report of the Law Commission is due in Autumn 2021.

### **Automated Vehicles**

33. In March 2018, the UK Government's Centre for Connected and Autonomous Vehicles (CCAV) asked the Law Commission to undertake a far-reaching review of the UK's regulatory framework for road-based automated vehicles. The Law Commission aims to produce its final report including recommendations for legislative change by the end of 2021.

34. The Welsh Government welcomes the Law Commission's work on this critical area for the future of passenger transport. The Welsh Government's consultation on the Wales Transport Strategy sets out a vision to improve the operation and maintenance of the road network, including through new technology. Innovations in passenger transport will play an enormous role in managing increasing demand and continuing to improve road safety whilst reducing Wales' carbon footprint and making more efficient use of our infrastructure. To do this safely, it is vital to have a legal framework which recognises the changing role technology will play in driving and supports people to have confidence in its use.

### **Coal Tip Safety**

35. Following a landslide from a disused coal tip in Tylorstown in February 2020, the Welsh Government began an assessment of the legislation underpinning coal tip safety. It found the current legislation is neither sufficiently robust nor fit for purpose to provide the necessary levels of management and oversight required to ensure public safety.

36. In October 2020, the Minister for Environment, Energy and Rural Affairs invited the Law Commission to undertake a review of coal tip safety legislation using powers under the Law Commissions Act 1965 (as amended by the Wales Act 2014). The Law Commission agreed this was an important piece of work and commenced its review of coal tip safety legislation on 2 November 2020. The review is expected to run for a period of 13-15 months.

37. The review will evaluate current legislation relating to coal tip safety with a view to identifying gaps, inconsistencies and approaches which are

unhelpful or have become outdated. The Commission has been asked to identify options for alternative regulatory models appropriate for adoption in Wales, and consider the features needed to ensure that any proposed system is effective and to propose recommendations to ensure a robust, integrated and future-proofed regulatory system which adopts a uniform approach to inspection, maintenance and record-keeping.

38. The Law Commission is expected to consult with stakeholders in spring 2021 and subsequently publish its report early in 2022.

## **Decisions taken not to implement**

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