



Law Commission
Reforming the law
Comisiwn y Gyfraith
Diwygio'r gyfraith

The Rt Hon Lord Justice Green
Chairman, Law Commission for England & Wales
1st Floor
Tower
52 Queen Anne's Gate
London
SW1H 9AG

The First Minister
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

e Nicholas.Green@lawcommission.gov.uk
LordJustice.Green@ejudiciary.net

Exec assistant: Charmaine Hunte
e Charmaine.Hunte@lawcommission.gov.uk
Charmaine.Hunte@justice.gov.uk

Via post & email

13th May 2022

Dear First Minister,

I write, following discussions with your officials, to set out the recommendations of the Law Commission as to whether certain changes to the law are appropriate for inclusion in the proposed consolidation of historic environment legislation for Wales, under Standing Order 26C.2(v) of the Senedd.

I can confirm, on behalf the Commission, that the following four matters are, in our view, appropriate for inclusion in a Consolidation Bill.

Powers to appoint assessors

In our report, *Planning Law in Wales*, we recommended that the power of the Welsh Ministers to appoint an assessor should be broadened so that it is exercisable by inspectors, and to allow assessors to assist in cases dealt with by written representations.¹ We envisaged that this change would apply equally to listed buildings and conservation areas.² We therefore recommend that such a change would be beneficial, would not represent a significant new policy, and would not be controversial. It was also the subject of consultation by the Commission. It would accordingly be an appropriate change to make in a Consolidation Bill, under Standing Order 26C.2(v).

¹ *Planning Law in Wales: Final Report* Law Com No 383, paras 11.17 to 11.27.

² As above, recommendation 11.4 at p 203

Notification of purchase notices

Under the current legislation, a purchase notice may not be served on joint planning boards (JPBs), even if it made the decision or order that gives rise to service of a purchase notice. The omission of JPBs from the scope of section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) appears to be an anomaly. Providing that a purchase notice be served on the relevant “planning authority”, defined to include a JPB, is in our view a beneficial change. Such a change would not be a significant new policy and would not be controversial. We therefore recommend it would be an appropriate change to make in a Consolidation Bill on the historic environment, under Standing Order 26C.2(v).

Applications by planning authorities for conservation area consent

Under the 1990 Act, an application for conservation area consent by an authority for its own proposed works is made direct to the Welsh Ministers. Curiously, regulations then provide that such an application is deemed to have been made to the authority and referred to the Welsh Ministers (which is, in substance, the position under statute as respects a listed building consent application). There is no reason why the legislative presentation of the procedure for conservation area consent should not be aligned with that for listed building consent. Such a change would not represent a significant new policy and would not be controversial. We therefore recommend it would be an appropriate change to make in a Consolidation Bill on the historic environment, under Standing Order 26C.2(v).

Notifying owners of applications for consent

There are, presently, very detailed and prescriptive powers to make regulations about notifying owners of applications for consent under section 11 of the 1990 Act. In the planning context, similarly detailed and prescriptive powers in the original Town and Country Planning Act 1990 were replaced by a new generally worded provision requiring the manner of notification to owners to be prescribed in a development order. Replacing the powers in section 11 of the 1990 Act with a similarly worded regulation-making provision as to the notice to owners would not in our view represent a significant new policy and would not be controversial. We therefore recommend it would be an appropriate change to make in a Consolidation Bill on the historic environment, under Standing Order 26C.2(v).

I would like to take this opportunity to congratulate the Welsh Government on starting on the road to making the law of Wales accessible. Our 2016 report on The Form and Accessibility of the Law Applicable in Wales/Ffurf a Hygyrchedd y Gyfraith sy’n Gymwys yng Nghymru, noted the need for the law to be clear and accessible, and recommended that the Welsh Government pursue a policy of codification. I am pleased that, following the enactment of the Legislation (Wales) Act 2019, the historic environment Bill is due to be the first consolidation measure introduced under the new standing order. I hope it is the first of many such simplifying measures.

With very best wishes,

A handwritten signature in black ink, appearing to read "Nicholas Green". The signature is fluid and cursive, with a large initial 'N' and 'G'.

The Rt Hon Lord Justice Green

Chairman, Law Commission