Environment and Sustainability Committee

Meeting Venue:
Committee Room 3 - Senedd

Meeting date:
Thursday, 12 March 2015

Meeting time:
09.30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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Agenda

1 Introductions, apologies and substitutions

2 Control of Horses (Wales) Act 2014: Post-legislative scrutiny (9:30 - 10:30) (Pages 1 - 25)

Steve Carter, National Director for Wales, RSPCA
Sarah Carr, Equine representative, BVA Welsh Branch, British Veterinary Association
Charles de Winton, Rural Surveyor, CLA Cymru
Phillip York, British Horse Society

E&S(4)-08-15 Paper 1
E&S(4)-08-15 Paper 2
E&S(4)-08-15 Paper 3
E&S(4)-08-15 Paper 4

3 Control of Horses (Wales) Act 2014: Post-legislative scrutiny (10:30 - 11:30) (Pages 26 - 33)

Lee Jones, Head of Regulatory Services, Bridgend County Borough Council

Matthew Howells, Staff Officer, Rural and Wildlife Crime, Association of Chief Police Officers

E&S(4)-08-15 Paper 5
E&S(4)-08-15 Paper 6

4 Papers to note

Planning (Wales) Bill: Correspondence from the Minister for Natural Resources (Pages 34 - 63)
E&S(4)-08-15 Paper 7

5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

6 Discussion of forward work programme (11:30 - 11:45) (Pages 64 - 71)
E&S(4)-08-15 Paper 8

7 Planning (Wales) Bill: Discussion of approach to Stage 2 scrutiny
(Pages 72 - 73)
E&S(4)-08-15 Paper 9

Document is Restricted

Evidence Paper

FROM THE EXTERNAL AFFAIRS WALES DEPARTMENT

National Assembly for Wales, Environment & Sustainability Committee Session
Control of Horses (Wales) Act 2014, Post-Legislative Scrutiny

February 2015

RSPCA Cymru welcomes the opportunity to submit evidence, both in written and oral format, to the Environment and Sustainability Committee's post-legislative scrutiny session in relation to the Control of Horses (Wales) Act.

The implementation of this important legislation was a key step for equine welfare, and forms a key tenet of the Welsh Government's wider plan for the nation's horse population. Whilst not a panacea to the horse crisis which has long gripped Wales, the legislation remains an important, much-needed step, equipping Local Authorities with consistent powers to take swift action to tackle fly-grazed or abandoned equines.

Whilst the introduction of these new powers may act as a deterrent to irresponsible equine ownership, robust enforcement of the new law is crucial to ensure its effectiveness. As such, the Environment and Sustainability Committee's exploration of the relative successes and issues thus far following the law's commencement is a welcome body of work.

Clearly, there is a continued need to progress a broad framework to meet the wide-ranging equine challenges facing Wales, including on the issues of traceability, identification, irresponsible ownership, tethering and the regulation of livery yards. However, powers now held by Local Authorities under the Control of Horses (Wales) Act can play a key role in tackling an issue which can have severe consequences for the welfare of equines and community safety.

RSPCA Cymru has been very pleased to work proactively with a number of Local Authorities carrying out operations under the new legislation. Though our resources are limited, we have managed to provide support to a number of those utilising the legislation, and continue to work with Councils in Wales regarding their policy and plans concerning the use of these powers to tackle local fly-grazing and abandonment issues.

The legislation itself was introduced through a streamlined procedure. Given the RSPCA organised a summit, with the Welsh Government, in September 2012 which highlighted the need for urgent legislation, this much-needed action was welcomed. However, on-going, robust monitoring of its successes, and whether it is achieving its aims, is key.

It should be noted, further to the Act coming into force, the RSPCA continues to champion the need for legislative change in England. At Westminster, the Control of Horses Bill is currently progressing through the House of Lords, and it is hoped Local Authorities in England will soon be equipped with similar powers to those in Wales. This would also mitigate risks of problems associated with fly-grazing and abandonment being displaced from Wales into England, given that the legislative toolkit to deal with these issues is currently stronger on one side of the border.

Impact of legislation since it was passed

Caution is necessary when seeking to make any sweeping statements as to the wider impact of the Control of Horses (Wales) Act. However, with the new powers now in place for just over one year, the Environment & Sustainability Committee's exploration of this issue offers a timely opportunity to assess the relative strengths and weaknesses of the new legislation thus far, and additional steps which can be taken to ensure its potential is realised.

Data indicates that some Local Authorities have been in a position to be proactive with regards to tackling incidences of fly-grazing and abandonment via the new legislation. Broadly, and positively, the legislation has enabled Local Authorities to act on the issue of locally fly-grazed or abandoned equines, beyond the geographically-defined areas which the three Local Acts previously in place covered.

With regards to the welfare of equines in Wales, a robust assessment as to the impact of the law is problematic as, notably, fly-grazing is not always a welfare issue. However, animals in such situations can quickly become a concern in welfare terms because of their environment and nourishment and, indeed, the Act has successfully removed equines from situations with potentially grave welfare consequences.

Additionally, the RSPCA has recently noted a significant, and very positive, fall in the number of horses at risk of welfare problems in Wales. In January 2015, broad estimates - whilst very difficult to quantify - from RSPCA and other groups indicate the number of equines deemed at risk of welfare problems in Wales was 570; a significant fall from the 3,550 deemed at risk in January 2014. Whilst we lack the evidence to directly attribute such positive trends to the introduction of the new legislation, it could be suggested that equipping Councils with additional powers to tackle horses left fly-grazed or abandoned may have played a key role in stimulating this change.

Where and when the Act has been used

The following grid of information was compiled further to discussions with the BBC, who received

responses to information requests from Local Authorities in January regarding their use of the Act. Approximately one year after its implementation, according to these figures, the new legislation has been used by 11 of Wales' 22 Local Authorities, on 291 occasions involving 460 equines.

	Occasions Act Used	Number of Equines
Blaenau Gwent	1*	49*
Bridgend	5	34
Caerphilly	2*	50*
Cardiff	73	73
Carmarthenshire	18	38
Merthyr Tydfil	6	8
Neath Port Talbot	1	0
Powys	2	2
Swansea	175	233
Vale of Glamorgan	7	20
Wrexham	2	2
TOTAL	**291**	**460**

** = a joint operation between Blaenau Gwent and Caerphilly was undertaken*

As these figures suggest, and as observed through RSPCA Cymru's collaborative working at both a policy and operational level, it is clear that very different approaches to utilising new powers under the Control of Horses (Wales) Act are being adopted across Wales.

To this end, the figures above indicate that Local Authorities who previously had powers to act under Cardiff City Council Act 1984, the Mid Glamorgan County Council Act 1987 or the West Glamorgan Act 1987 have been, largely, more prolific in utilising their new powers. This could be due to the existence of fly-grazing 'hot spots' within the local area but, also, due to their experience in utilising similar legislative provisions previously.

Certainly, both Swansea City Council and Cardiff City Council are using powers held under the Control of Horses (Wales) Act on a regular basis, including – we understand - to deal with individual horses in urban areas. Many other Councils are adopting a different approach.

Wrexham County Borough Council, for example, have been proactive in working with fellow Local Authorities and other organisations across North Wales with regards to adopting a policy concerning enforcement of the new legislation. Wrexham CBC have, subsequently, implemented an approach of risk-based intervention, highlighting costs of veterinary care, stabling and livery as a key barrier to utilising the powers more frequently, particularly in the context of receiving no additional budgetary resources to deal with issues of fly-grazed and abandoned equines.

Variances across Wales with regards to enforcement create a risk of displacement. Worryingly, irresponsible equine owners could conceivably target areas of Wales where Local Authorities are

financially unable, or have made the decision not to use their legislative powers. We would welcome further discussions, including all stakeholders, regarding any barriers which may be preventing some Local Authorities from using the legislative provisions contained within the Control of Horses (Wales) Act and, indeed, all legislation pertaining to equines.

Meeting its aims and objectives?

As indicated in the figures above, the legislation has, in approximately its first 12 months, had some success in dealing with equines left fly-grazed or abandoned, with some 460 seized under the new legislative provisions.

Equine-related problems remains a significant problem dealt with by the RSPCA's Inspectorate in Wales. Whilst the Control of Horses (Wales) Act is not, on the surface, a dedicated piece of animal welfare law; it is hoped the legislation increasingly acts as a deterrent to an element of irresponsible ownership - namely fly-grazing and abandonment - which can lead to significant welfare issues for the equines involved.

One key objective of the legislation was to ensure uniform enforcement across Wales. However, as identified, different Local Authorities have undertaken markedly variant approaches to utilising the legislation, and 11 had not done so within a one-year period. More research is necessary to ascertain the consistency of enforcement across Wales, taking account of the different resources provided within each Local Authority area.

As noted, Cardiff Council has been one of the most prolific Local Authorities with regards to utilising the new legislation. Whilst the old law was subtly different, the Council stated that the introduction of the Control of Horses (Wales) Act left legislative provisions in the city *"largely unchanged"* from the powers held previously via the now-defunct Cardiff City Act 1984[1]. This indicates something of a 'business as usual' approach for Councils in this position.

We have previously identified that Councils that did not have at their disposal local Acts, such as the Cardiff City Act 1984, will not have been practiced in undertaking this type of specialism previously, and may wish for further support, which could be gained by working closely with neighbouring Councils. Consequently, one year on, stakeholders may wish to consider the need for further guidance, perhaps specified on a geographic basis, acknowledging the existence of fly-grazing 'hot spots' across Wales and the fact some Councils were recently equipped with these powers for the first time.

Barriers to implementing the legislation?

As indicated, the most significant barrier to the implementation of these powers is the financial pressures faced by Local Authorities across Wales. We have long highlighted that the issue of resources must be a key consideration for the Welsh Government when monitoring and analysing

[1] City of Cardiff Council, Environment Scrutiny Committee, Future of Stray Horse Management in Cardiff, 8 July 2014

the success of this legislation. The new powers, whilst exceptionally welcome, came - understandably, given the exceptionally difficult economic climate - with no additional resources for enforcement.

Consequently, many Local Authorities have had to adopt workload associated with the Control of Horses (Wales) Act into existing staffing resources. This has created an element of uncertainty. A number of Local Authorities have stated, *"matters of policy on the use of the powers and the frequency of instances of occurrence may have budgetary implications which are difficult to predict and quantify"*[2].

We understand the Welsh Government has made funding available in certain circumstances. An example was the £3,500 provided by the Welsh Government in response to a request from Blaenau Gwent Council; to fund 50% of costs for the work required under the Control of Horses (Wales) Act 2014 for an operation at Manmoel Common[3]. As we enter the second year of the Act being in force, we believe Local Authorities may benefit from the receipt of information at regular intervals as to the occasions in which funding has been provided to assist with meeting veterinary, removal, disposal and other costs in line with the provisions of this legislation, and the circumstances in which this has taken place.

Furthermore, it would be expedient for the Welsh Government to examine whether any additional training need is required within Local Authorities, primarily among those not accustomed to using such legislative provisions previously. Indeed, anecdotal evidence suggests some Local Authorities do not feel equipped to put these powers into use or, in some instances, have favoured arguably less appropriate legislation to tackle matters, such as the Animals Act 1971.

Utilising these powers also carries public relations issues for Local Authorities in Wales. Unfortunately, the disposal of equines under the legislation may, in many situations, involve euthanasia for the horses involved. Whilst this sad situation is a direct consequence of the irresponsible actions of many horse traders in Wales, many Local Authorities may be uncomfortable with this potential scenario. These are tough decisions for Local Authorities to make, and methods for dealing with such difficult, emotive and tragic circumstances can be shared between key stakeholders, further enabling best practice.

Conclusions and moving forward

In summary, RSPCA Cymru continues to regard the introduction of the Control of Horses (Wales) Act as a hugely positive step, and a vitally important component of the toolkit to tackle the nation's long-standing equine crisis, for which the Welsh Government should be commended. Clearly, resources are a considerable issue for many Local Authorities in Wales, and one which the

[2] Local Authorities in North Wales have stated this in reports to Council Members concerning the adoption of the legislation, for example Wrexham CBC here, and Denbighshire County Council here.
[3] Welsh Government - Meeting the costs of fly grazing and abandoned horses on Manmoel Common, 24 February 2014

Welsh Government must monitor closely. The consistency of enforcement in Wales requires further enquiry, and potentially highlights questions regarding whether displacement could occur.

Concerning animal welfare services generally, standards of provision vary considerably. Enabling laws often come with no new resources for Local Authorities; and RSPCA Cymru will be calling for the Welsh Government to review, generally, the capacity, resources and expertise of local government to enforce key legislation which impacts upon animal welfare; including the Control of Horses (Wales) Act.

Generally, we were extremely pleased to be involved in a multi-agency Equine Task Force[4], previously established in November 2012. This was central to tackling a specific, long-standing issue with a prolific horse breeder in South Wales, including as a key resource for the sharing of intelligence. This highlights the benefits of a multi-agency approach in tackling issues related to equines and their welfare, and should an operation of this nature be necessary again in the future, the deployment of the Act would be of great benefit.

The Welsh Government has previously outlined its intention to monitor the success of this legislation. We welcome this; and look forward to seeing information regarding the Act's successes thus far. We would hope there would be a qualitative analysis regarding the views of Councils, whether they feel equipped to utilise their powers, and what barriers have been identified which may be preventing consistent enforcement, and plans to address such issues.

[4] Stakeholders involved with this Equine Task Force included RSPCA Cymru, Welsh Government, Police and Local Authorities.

Dear Sirs,

My Colleague, Karen Anthony has asked me to respond and attend on her behalf.

I was part of the original group the Welsh Government put together, along with the farming Unions and others to seek general agreement as to a way forward in order to control
this ever increasing problem.

The Legislation was duly drafted of which I on behalf of CLA Cymru duly commented on.

I have had, prior to this last week, a very positive response from members as to the effectiveness of the legislation. A member from the Swansea area contacted me to ask what can be done with the horses on his land. He was not aware of the new Legislation, and when told to contact his Local Trading Standards team was amazed at how efficient the process was and that the problem was solved very quickly and efficiently. He then rang to report how impressed he was with the result.

Since however receiving this email, I have received from another prominent member from Pembrokeshire a very different report. 5 horses had been herded by the Police into one of his fields. There was no gate, the Police merely secured the gateway with their blue scene of crime tape, low and behold the horses got out and were penned in an adjoining field this time with a gate on. I was then contacted by our member wanting to know what he could do with the said horses. As with the case above, I recommended he report this to Pembrokeshire Trading Standards. He was swiftly told this was only a discretionary power and because the Council has no resources they would not follow this up. Our member then told the Police that due to their actions he would be seeking compensation from then for loss of grazing, they very quickly found the owner and the horses disappeared!

From attending meetings with Colleagues from the English Regions and our Headquarters in London, it appears this is now a real problem in England with the problem simply moving East of Offers Dyke. My English counterparts are very envious of the powers we now have in Wales, but however were somewhat disappointed when the leader of the House of Commons was not prepared to accept similar proposals for draft legislation for England, because I am told, it was too similar to Labour legislation in Cardiff!

Finally as clearly illustrated, by giving 'discretionary powers'
to Local Authorities who may well wish to ignore their responsibilities because they have no money, does make a potential nonsense of this new act and above

all shows up clear shortcomings, especially going forward where Local Authorities will come under more financial constraints. This in turn does nothing to demonstrate to our members there is a solution to this problem, when new Law is passed but it is not being implemented on the ground.

If you would want exact details, I am happy to go back to our members to ask for their details to be given.

Yours sincerely,

CBP de Winton MRICS
Chartered Surveyor- CLA Cymru

Written Evidence: The Control of Horses (Wales) Act 2014.

Submitted by: Mr Philip York, on behalf of The British Horse Society.

Introduction

The British Horse Society represents the interests of the 3.5 million people in the UK who ride or who drive horse-drawn vehicles. We represent over 82,000 core BHS members, 34,000 members of affiliated Riding Clubs and the members of Affiliated Bridleways Associations.

As the foremost and most influential equestrian charity in the UK we work tirelessly within our four charitable objectives of education, welfare, access and safety.

Following an unprecedented increase in the numbers of horses being fly grazed and abandoned across Wales, the introduction in January 2014 of The Control of Horses (Wales) Act was widely welcomed by all stakeholders from within and outside of the equestrian industry.

Welfare charities and Local Authorities in Wales were stretched to capacity trying to deal with the welfare problems that occurred as a direct result of fly grazing and abandonment. Public safety was also a huge concern where horses were found to be roaming public highways and other areas of public space.

With its own network of welfare officers across Wales, the British Horses Society worked relentlessly trying to cope with the increased demand for advice and assistance from those directly affected by fly grazing. We were called upon to offer advice to many of those affected in Wales, particularly landowners who had become exasperated by the lack of any tangible assistance available to help them with fly grazing and abandonment.

Our trained and highly experienced welfare officers are well used to dealing with a variety of welfare issues. However some 5 years ago it was becoming increasingly apparent that the scale of fly grazing and abandonment of horses was reaching an alarming level.

The general economic downturn across the UK is also having an adverse effect upon equine welfare. We believe that this, amongst other factors, has played its part in the deteriorating situation that we have witnessed over the last 3 years.

This led the equine welfare industry to release a joint report on the equine crisis in the UK. It was used to both highlight the equine welfare industry's concerns and to lobby MPs in Westminster for the introduction of new legislation.

Whilst we broadly welcomed the recent introduction of new legislation in Wales, we do believe that more could and should be done to further assist those directly affected by fly grazing and the abandonment of horses in Wales as well as those tackling these issues.

A Memorandum of Understanding between those stakeholders who work together to address horse related issues should be considered. It should set out what each party expects from the other and should cover every aspect of the relationship when working together.

Impact

Undoubtedly the Control of Horses (Wales) Act has been beneficial in addressing fly grazing and abandonment in certain circumstances. There has been a genuine reduction in reported cases of large scale fly grazing. That is to say, that which was being perpetrated by a few individuals in South Wales has declined.

However reports from areas in the South of England indicate that fly grazing and abandonment are increasing. This may suggest that the Control of Horses (Wales) Act has caused perpetrators to move their activities away from Wales to England where there currently is no similar legislation.

The impact of over breeding should be considered as a large contributing factor in both fly grazing and the abandonment of horses. The over breeding of low value horses and ponies is continuing to have an adverse affect upon horse welfare generally and may also be considered a contributing factor in the market value of leisure horses being extremely low.

On areas of common land we are still witnessing acute over population problems. Abandonment is commonplace as is uncontrolled breeding. Aside from the immediate welfare issues this raises, the environmental impact of over population is considerable.

It would be fair to say that over population, especially on common land in Wales, has always been problematic. Prior to the economic downturn the slaughter trade in low value equidae was one avenue of disposal. Whilst horses were not slaughtered in any great number, it was nevertheless the route for some and did have a slight impact upon numbers.

The introduction of equine identification legislation and the economic downturn affecting carcass prices has greatly discouraged owners from using slaughter as a means of disposal.

A Collaborative Approach

Since January 2014 large numbers of horses have been seized utilising the Control of Horses (Wales) Act. Encouragingly we have seen a more collaborative approach between Local Authorities, the police and equine charities. Without such collaboration undoubtedly far less would have been achieved in terms of tackling fly grazing, abandonment and associated issues.

Individual charities will have a differing approach towards how to tackle the various issues and problems encountered with equine welfare in Wales. Each may also have a differing specialism and skill set. They most certainly are constrained by financial resource which inevitably determines whether they are able to re home a small or larger number of seized and abandoned horses.

Many have policies which do not allow them to become directly involved with the euthanasia of healthy horses. Where euthanasia will possibly be an outcome, they may not be able to offer their assistance with capture and transportation.

Likewise individual Local Authorities in Wales have a differing approach towards the Control of Horses (Wales) Act and its interpretation. Those greatly affected by fly grazing and abandonment may take a zero tolerance approach whilst other authorities not blighted by these issues may not place great importance upon the use of the Act.

Nevertheless, a collaborative approach when confronting fly grazing and abandonment issues will undoubtedly be far more beneficial to all stakeholders.

We have already seen good examples of Local Authorities and equine welfare charities working together to achieve their own objectives. The training of Local Authority Officers in horses handling, identification and other equine welfare related topics has already taken place. Further training initiatives will be beneficial and help foster relationships and collaborative working.

The use of legislation

Last year the Control of Horses (Wales) Act was used by Local Authority Officers on Manmole common Blaina Gwent, to clear the common of all illegally grazing ponies. In previous years, before the new legislation, this particular common had suffered from over population as a result of abandoned ponies. Charities worked hard alongside Local Authority officers to remove suffering animals utilising the Animal Welfare Act 2006. Over 50 ponies were seized in the winter of 2012/2013. Many more died from starvation and disease.

Had financial assistance from Welsh Government not been forthcoming, it is doubtful whether this operation could have been staged. However using a collaborative approach, some 40 ponies were successfully gathered and re homed to charities.

Currently however, most equine welfare charities are at, or close to, maximum capacity. It is highly doubtful whether further places could be found for other large groups of horses.

In the Swansea area and the Gower Peninsula, fly grazing and abandonment has been particularly prevalent. On the Loughor Estuary large numbers of horses have been expected to live in a wholly unsuitable environment causing suffering and fatalities. It is encouraging therefore to learn that Swansea Council are working hard to address this problem using the Control of Horses (Wales) Act.

Similar operations which involve the seizing of animals, whether under the Control of Horses (Wales) Act or the Animal Welfare Act 2006, can only take place if the necessary funding is forthcoming. These are expensive operations to carry out. Furthermore other animal disposal options may have to be considered if animal charities can longer offer places for seized animals.

Generally most commoners associations would be willing to co operate with Local Authorities to address fly grazing and abandonment. However there is some reluctance from them to make any financial commitments towards addressing these issues. The British Horse Society would certainly wish to see more commoners associations taking ownership of the existing problems and working with other stakeholders to find solutions.

Derogation and Identification

In 2009 the Equine Identification (Wales) Regulations came into force. This requires all equidae to have either a horse passport or, if born after 1 July 2009, be inserted with a microchip and registered with a passport issuing organisation.

In certain areas a derogation exists which allows for pre defined populations of semi feral ponies to remain on designated areas without either a passport or microchip. Certain rules apply when moving animals to either a slaughter house or to an area not covered by a derogation.

The special sales organised to dispose of ponies from areas of derogation were, for a variety of reasons, not successful and few ponies were sold.

Whilst the sentiments around the reasoning for derogation may have some merit, in practice it has hindered and not helped to identify abandoned horses on common land. It has not assisted with the identification of owners when welfare problems arise and an owner needs to be found. Nor have the overpopulation problems found on some areas of derogation improved.

The problems are exacerbated when commons associations and pony improvement societies are not fulfilling their obligations under the guarantees required to assure the European Commission that the requirements of the regulation, in respect of identification and traceability can be met.

The British Horse Society believes that a review of derogation is required to determine whether they should be continued, extended or removed.

Statutory Enforcement

Whilst we have seen the successful use of the Control of Horses (Wales) Act by some Local Authorities, it can be frustrating when legislation exists for the purpose of dealing with fly grazed and abandoned horses, yet a Local Authority can opt out of using it.

The 11 councils that have taken enforcement action using the Act have given a steer towards overcoming the current equine crisis in Wales. It is hoped that the remaining 11 will take encouragement from this and recognise how hugely beneficial the Act can be when confronted with equine related issues.

The British Horse Society recognises the resource constraints that many Local Authorities in Wales operate under. Yet we also believe that consideration should be given towards the Control of Horses (Wales) Act becoming a statutory requirement.

Control of Horses (Wales) Act 2014 post-legislative scrutiny
World Horse Welfare comments

World Horse Welfare would like to thank the Environment and Sustainability Committee for the opportunity to comment on the Control of Horses (Wales) Act 2014.

We very much welcomed this Act when it came into force, and continue to believe that it represents an excellent step forwards in the fight against fly-grazing, which is one of the most prevalent equine welfare issues we have faced during the ongoing equine crisis.

The Act can be used very successfully if local authorities have the confidence, resources and motivation to take decisive action on this issue. Swansea and Cardiff in particular are making full use of the new powers available to them. However, we are concerned that some local authorities still choose not to use these new powers – we believe as a result of concerns about the resource implications of taking in large numbers of horses. This is despite the fact that fly-grazing can be very costly to local authorities, and the powers in the Act have the potential to save resources by allowing problems to be resolved more quickly.

We are concerned that the fact that this Act requires local authorities to act, rather than giving extra tools to private landowners, has left private landowners vulnerable to continued fly-grazing. Although landowners can request that local authorities take action, local authorities are not obliged to do so – meaning that landowners are still being forced to use 14 day notices under the Animals Act 1971. We believe that some of this may be fuelled by a lack of understanding of the Act.

We would suggest that further provision is therefore needed to ensure that landowners are not left disadvantaged by this Act – whether through granting extra powers to landowners and commoners, extra resources to local authorities, or looking into arrangement whereby the local authority posts 7 day warning notices, but the horses become the responsibility of the landowner once the deadline expires. We note that the Welsh Government has provided excellent and comprehensive guidance for local authorities on the Act – we would suggest that guidance should also be produced for commoners and private landowners, explaining how the Act could apply to the land for which they are responsible, and how they can request local authority assistance.

This Act has improved the equine welfare situation in Wales, and we encourage the Committee to seek improvements to the legislation to improve the situation even further.

For further information:

w: www.worldhorsewelfare.org/fly-grazing-documents
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Agenda Item 3

Environment and Sustainability Committee

Control of Horses (Wales) Act 2014

26th February 2015

WLGA • CLlLC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.

2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

Control of Horses (Wales) Act 2014

3. The problem of stray, and abandoned horses along with associated welfare issues has been well publicised, evidence from a number of partner agencies highlighted this as an increasing problem over the last few years particularly in South Wales (though there have also been incidents across North Wales). Large numbers of horses had been abandoned in publicly owned spaces, common land and private land, commonly referred to as 'fly-grazing'.

4. The horses are left to graze often without regular care and attention or adequate feed. These 'fly grazing' incidents have resulted in a variety of animal welfare concerns, damage to public and private land and predominately incidents of horses straying onto the highway where they could endanger public safety.

Public Safety

5. There have been several public safety issues surrounding vehicles being struck by unsecure horses, this has included trunk roads and the M4 being disrupted by loose horses. This has diverted emergency services from their core business across Wales. There have been numerous incidents of animal welfare problems, with horses being stranded in water logged fields, without adequate feed or generally unsuitable conditions. These animals are very often not easily traceable back to an owner.

6. The exact number of horses still remains unknown but at its height was estimated to be in excess of 2000 across Wales**.**

Food safety

7. Although not specifically controlled by this legislation, there are also significant concerns that uncontrolled horse populations may contribute to food safety and food standards issues where veterinary medicines, and misdescribed food may enter the human food chain, resulting in widely publicised and extremely costly "horsemeat" type scandals.

Multi agency legal framework

8. This issue of "flygrazing" crosscuts geographic and functional areas of responsibility. The previous framework legislation was piecemeal, complex and was not drafted to tackle the problems on this scale. The size and impact it has had is unprecedented. The number of enforcing bodies and interested parties affected covers a wide spectrum of agencies.

9. Charitable organisations and local authorities have borne the cost of providing veterinary care and stabling abandoned animals through the height of the problems. Equine charities were at full capacity meaning that opportunities for re-homing were extremely limited; euthanasia becoming a necessity.

Enforcement response

10. The robust response provided by local government trading standards and animal health officers, was only possible through a significant diversion of staffing and resources by all of the partner agencies. Although successful in dealing with the immediate problem, a more sustainable solution was required.

11. With the support of Welsh Government who assisted in the co-ordination of key agencies through a national multi agency task force, and the development of the Control of Horses legislation, led to a more consistent legislative position across Wales.

12. Up to this point authorities were using local legislation or legislation that it was never intended for such large scale problems. These difficulties were intensified by the scale of the present problem, due to the regional nature and the number of horses involved, all adding to the pressure on the local authority and its partners. This was exacerbated by the significant public and press interest in such an emotive subject for action to be taken.

Costs to local government

13. As stated the scale of this problem and the impact it has had is unprecedented. The infrastructure and resources are still uncertain to support this in the longer terms, as no funding was provided to local authorities to enable them to dedicate new resource to a new piece of legislation to deal with a new and expanding area of concern. This has caused local government considerable discomfort when prioritising existing resource, and making decisions which will please one, but not another.

14. Bridgend as example spent in excess of £65K, over one winter period of 2011/12, with the ongoing costs being far greater. The above figure includes £24,644 on horse recovery costs, £8,812 on veterinary fees, £22,360 on stabling and livery fees, plus a number of ancillary fees, just over a 3 to 4 month period.

15. As illustrated the figure is primarily made up of veterinary fees, livery costs, security, transportation and re-homing. The figure could be significantly higher if it was not for the invaluable support of the horse charities, and the good will of many of the officers involved.

Resource impacts

16. The Authority (in partnership with the Vale of Glamorgan Council) during this period seized 204 horses and has reports of over 20 dead horses during the peak of the problems. The problems placed a significant strain on the Public Protection (Trading Standards/Animal Health) and Highways sections in particular. The scale of the problem has meant that officers have had to operate out of hours and diverting them away from being able to respond to any other issues and from audited work which has put a strain on the attainment of key performance indicators, elsewhere within the services. Time was diverted from less visible issues and impacted on the planning and proactive work of the respective departments as the focus was on the immediate issues caused by the horse problems.

17. In addition considerable management time was spent on the problem due to the associated risks and the need to liaise with several partner agencies. Due to the high profile nature there has been a need to produce regular briefings and responses to media and public or councillor enquiries, as well as bidding for additional resources, again all time consuming and a diversion from other prioritised work.

18. In practice even where a robust stance has been taken in seizing horses, there is a significant cost and risk, as horses have been found on the highway, housing estates, and school fields, putting the public as well as the staff that are responding at significant personal risk. On occasion there have been significant numbers of horses straying at any one time; these are often large semi-feral animals. It was also a significant risk to the public as officers were diverted away from other tasks, which are routinely conducted to ensure public safety.

19. It should also be noted that once a local authority takes ownership they are then responsible for the welfare and therefore there are significant livery costs and veterinary fees etc., as highlighted above.

Positive outcomes

20. The process of developing legislation was part of a high profile response to the problems, and the development of the legislation sent a positive message out that the act of abandoning horses was not acceptable. It has provided local authorities with a more consistent method of responding to the problem. It will be essential that all enforcement and third sector partners continue to act together when intelligence and complaints require actions to be taken in the future. This is key to ensuring the problem is dealt with effectively, efficiently and swiftly.

Local priority decision making

21. However, it cannot be stressed enough, that engaging enforcement staff in actively investigating these incidents is an extremely costly activity; there are undoubted mischiefs which can be challenged and put right where robust action is taken by the local authority (together with its partners); however local policy decisions, priorities and budgets will determine whether the power to act will be used for any given situation. This will inevitably mean that in some situations the local authority, having considered all of the circumstances, may decide not to engage their power to act.

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Welsh Chief Officer Group	
Protective Marking:	Not Protectively Marked
Author:	Chief Constable Simon Prince – Chair of Welsh Chief Officer Group
Title:	Control of Horses (Wales) Act 2004
Version:	One
Summary:	Evidence paper for the Environment and Sustainability Committee – Control of Horses Act – Evidence session on the 12th March 2015 on behalf of the four Police Forces of Wales.
Authorised by:	Chief Constable Simon Prince

Thank you for the opportunity to submit evidence on behalf of the four Police forces of Wales.

Pre the 2014 Act being implemented fly grazing was particularly prevalent in South Wales along the M4 corridor, notably in the local authority areas of Bridgend and the Vale of Glamorgan. The problem was not only increasing but spreading into other local authority areas with Dyfed Powys Police and Gwent Police receiving reports from members of the public. Both public and private land was targeted by unscrupulous horse owners. Police advice at the time was to refer calls relating to public land to the relevant Local Authorities and in the case of private land, the owners would be advised of the civil action available to them.

Accurate and reliable Police data was not available at the time. This was down to the way calls to the Police were categorised with keyword searches returning thousands of calls relating to 'horse', 'pony', 'ponies' and 'grazing.' To research each individual call to establish the true picture was not realistic at the time. That is still the case.

As the Vale of Glamorgan and Bridgend Policing area of South Wales Police, known as the Central Basic Command Unit, suffered the most from fly-grazing issues it would be appropriate to highlight the effectiveness the Act has had there. Taking into account the keywords 'horse' and 'pony' the number of incidents in the Central BCU for 2012 was 1300 (not forgetting that this figure will include incidents at the 'Horse & Groom', hunting incidents etc.). South Wales Police then introduced Operation Thalium towards the end of 2012 and into 2013. This was a joint operation with Animal Health and Trading Standards, which resulted in the successful prosecution of an individual, whose fly-grazing activity impacted the most on the area and indeed all across South wales. The number of incidents then for the same area in 2013 was 513 and then in 2014 post implementation of the Act the figures came down to 298. As I have already alluded to these figures include all horse and pony related incidents. Less horses being fly-grazed in turn reflects the number of 'loose horses on the road' incidents which has therefore had a positive impact on policing in South Wales.
With enforcement action being taken in one area, one might think that the problem would have been dispersed to another, however Gwent Police, unable to give accurate data, report having seen a reduction in the problem since the same individual's conviction.

In Dyfed Powys although over 600 calls can be contributed to horses on or near a highway in 2014 only one call can be classed as fly-grazing, however on this occasion the caller was not aware that Carmarthenshire Local Authority were already dealing with the case and had already arranged with Police Officers to be present the following day when it was planned to seize the horses involved.

The situation in North Wales Police is unchanged with no issues prior to or post the Act being implemented.

In conclusion

- The impact of this piece of legislation since it was passed has been a positive one for the police.
- As the Act is enforced by the Local Authorities the Police are unable to give details of where and when it has been used.
- From a policing perspective it would appear that it has achieved its aims and objectives.
- As the legislation is enforced by Local Authorities the police cannot comment on any barriers to the implementation of the Act, however Police forces will work with Local Authorities where there is an identified need for assistance.

Agenda Item 4.1

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/CS/0214/15

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26th February 2015

Dear Alun Ffred Jones AM

Planning (Wales) Bill

During the general principles debate on 10 February I committed to write to you in response to the Stage 1 Committee Reports from the Environment and Sustainability Committee and the Constitutional and Legislative Affairs Committee, on the Planning (Wales) Bill.

I have detailed below, my response to all the recommendations of both Committees, although where both Committees made the same recommendation I have only addressed the recommendation of the Responsible Committee.

I outline how I intend to respond to the recommendations and clearly state where I agree that there is a need to make an amendment to the Bill. I also outline where I have already tabled Government amendments in response to the Committee recommendations.

I trust the Committee will find my responses useful in further scrutiny of the Bill.

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Recommendations from the Environment and Sustainability Committee's Stage 1 Report on the Planning (Wales) Bill

Recommendation 1 - We recommend that the Assembly supports the general principles of the Bill.

I thank the Committee for recommending that the Assembly accept the general principles of the Bill and I was pleased to see the Bill receive unanimous support during the vote on 10 February.

Recommendation 2 - We recommend that the Minister brings forward an amendment to the Bill to give Place Plans a formal development plan status under Section 38 of the Planning and Compulsory Purchase Act 2004 and gives further consideration to how local communities can be given greater opportunities to engage in the preparation of all development plans.

I have instructed my officials to explore Place Plans further to ensure communities are able to retain maximum flexibility in the preparation of Place Plans that can be varied to suit the aspirations and the capabilities of different communities. I propose a consistent approach for communities working with local councils as part of Supplementary Planning Guidance. I believe this approach would assist local communities in engaging with the plan making process and would be a quicker, more cost effective and less bureaucratic process than giving Place Plans development plan status. The IAG report considered that there was a benefit in adding consistency to the Place Plans process and that this could be achieved through Supplementary Planning Guidance.

Recommendation 3 - We recommend that the Minister lays a revised Regulatory Impact Assessment before the Assembly in advance of the debate on the general principles of the Bill.

I committed to issue a revised Regulatory Impact Assessment before the Assembly; however, my intention is to lay a revision before Stage 3 as required by Standing Order 26.28, to reflect the changes to the Bill as a result of Stage 2 amendments. I will also use this opportunity to rectify the minor errors identified during Stage 1 and on which, I wrote to the Finance Committee on 13 November 2014.

Recommendation 4 - We recommend that the Minister brings forward an amendment to the Bill in order to insert a statutory purpose for planning. This should be drafted along similar lines to the statutory purpose recommended by the Independent Advisory Group in its report.

And

Recommendation 5 - We also recommend that the Bill is amended to include a provision that would allow Welsh Ministers to issue guidance to Local Planning Authorities on how to apply the statutory purpose.

It is not my intention to insert a statutory purpose for planning and sustainable development on the face of the Planning Bill. I stand by my previous statements to the Committee that my Well-being of Future Generations Bill provides the overarching framework and goals for all public bodies, which includes local planning authorities and Welsh Ministers when undertaking their functions under the Planning Acts. The IAG report predates the Well-being of Future Generations Bill and you will be aware that they recommended that any definition of SD should be contained in that Bill.

Recommendation 7 - We recommend that the Minister brings forward an amendment to Section 70 of the Town and Country Planning Act 1990, to make it clear to all involved in planning that decision makers can have regard to the impact on the Welsh Language so far as it is material to an application. Any amendments should be clarificatory and not change the position as to weight.

I have tabled a number of amendments which strengthen the Welsh language through the plan making process. I am currently considering this recommendation in terms of its legal effect and policy intention.

Recommendation 8 - We recommend that the Minister introduces a requirement to carry out Language Impact Assessments for certain major planning applications.

I tabled a government amendment on 11 February to strengthen Welsh language consideration as part of the sustainability appraisal for Development Plans. Therefore I consider that an amendment with regard to major planning applications would represent duplication of effort, as the Development Plan and the impact assessment which accompanies it provides a firm basis for rational and consistent decisions on planning applications and appeals. The approach which I have outlined allows the cumulative impacts of development to be considered thoroughly and suitable mitigation measures to be identified and secured. However I accept that there may be limited situations where major development proposals come forward outside the LDP and have not been subject to an impact assessment. In response to this recommendation, I have instructed officials to update planning policy and guidance to set out the circumstances in which LPAs should carry out a Language Impact Assessment at the planning application stage.

Recommendation 9 - We recommend that the Welsh Language Commissioner should be given a formal role in assessing the quality of language impact assessments, both for development plans and for certain major planning applications to ensure consistency. In making this recommendation we wish to

be clear that we are calling for a role for the Welsh Language Commissioner in assessing the quality of language impact assessments and not to have a role in the planning application process.

I agree that the Welsh Language Commissioner should continue to be consulted by local planning authorities during LDP preparation when they undertake the Sustainability Appraisal, as set out in TAN 20, and acknowledged by the committee at paragraph 55 of their report.

Further, I have asked officials to update planning policy and guidance to make it clear how and when developers and LPAs should notify the Welsh Language Commissioner of potentially sensitive developments. It is my view that the Commissioner's role should continue to be on a non-statutory basis, a position which is supported by the Commissioner.

However if the National Assembly decides that there should be a wider remit for impact assessment than that proposed in my response to recommendation 8 I would wish to give further consideration to making the Commissioner a statutory consultee for all planning applications subject to such an assessment.

Recommendation 10 – We recommend that the Welsh Government clearly explains how the proposed national Natural Resources Policy and area-based Natural Resources plans will interface with the planning regime before the introduction of the Environment Bill.

I thank the Committee for making it clear that it is seeking an amendment to the Planning Bill through the Environment Bill, once it is introduced to ensure that there is a clear link between the area-based Natural Resource plans and the planning regime. I have instructed my officials to work together to draft an amendment to the appropriate planning legislation through my Environment Bill.

Planning Policy will articulate the relationship between the NDF, SDP, LDPs and Natural Resources Policy once the Environment Bill is introduced.

Recommendation 11 - We recommend that the Minister brings forward amendments to the Bill to ensure that marine and terrestrial planning is closely aligned and that plan-makers (including Welsh Ministers) are required to have due regard for the interrelationship between these two environments.

Development plans set the context for decision making for an LPA area, in line with national polices and must set out the LPA's objectives for the development and use of land in its administrative area. Plans must be based on evidence and prudent use of resources, meeting social, environmental and economic needs. Planners are required to take into account all other plans or strategies with implications for the coastal area, such as the Marine Spatial Plan or Integrated Coastal Zone Management Plans.

A European Union Directive (2008/56/EC, marine environmental policy) has been transposed into UK legislation. It requires the Secretary of State to prepare a marine strategy and the Welsh Ministers "in exercising any functions so far as affecting the marine strategy area, (to) have regard to any marine strategy".

The European Union is also bringing forward Directive 2013/0074 establishing a framework for maritime spatial planning and integrated coastal management. This stipulates that integrated coastal management is a tool for the integrated management of all policy processes affecting the coastal zone, addressing land-sea interactions of coastal activities in a coordinated way with a view to ensuring the sustainable development of both coastal land and marine areas.

Chapter 5 of Planning Policy Wales already identifies that Integrated Coastal Zone Management is a material consideration in formulating land use plans and strategies, and in taking decisions on development in the coastal area.

Therefore it is not necessary to legislate for this in the Planning Bill.

Recommendation 12 - We recommend that the Minister brings forward amendments to the Bill to link statutory national and regional transport planning arrangements and the National Development Framework and Strategic Development Plans.

National Development Framework

Development plans must be based on evidence and a prudent use of resources; meeting social, environmental and economic needs. Planners are required to take into account a variety of plans and strategies when producing development plans including transport, minerals and waste and biodiversity for example. These plans and strategies will also inform the production of the National Development Framework.

The Bill requires the Welsh Ministers to set out their policies in relation to the development and use of land in Wales as they consider appropriate. This will include the national transport plan ensuring alignment of both plans will enable the delivery of key infrastructure projects.

I do not consider that it would be prudent to identify specific plans in primary legislation as these could change over time, or may expire. The current approach enables flexibility to cover new policies of the Welsh Ministers as they emerge in the future.

Strategic Development Plans

Current powers within the PCPA, section 62(5)(g) enable transport plans to be listed as a matter that LPAs must have regard to when developing their LDP. The same

approach will be adopted for SDPs, and section 5, 60I(6)(f) of the Planning (Wales) Bill gives the regulation making power to achieve this in a proportionate and responsive manner.

Recommendation 14 - We recommend that the Minister confirms that the regulations for Strategic Development Plans will include a requirement for these plans to have regard to the relevant Local Well-being Plans.

It is my intention to use regulations to ensure that the local well-being plans are specific additional matters that must be taken into account during the plan making process of SDPs. The Well-Being of Future Generations (Wales) Bill makes an amendment to the Planning and Compulsory Purchase Act 2004 to ensure LDPs have regard to local well-being plans.

Recommendation 15 - We recommend that the Minister leaves the Bill as drafted in relation to National Parks and that he reconsiders his intention to bring forward amendments to give Welsh Ministers the power to create Joint Planning Boards that could in future include whole or part of a National Park.

I thank the Committee for this suggestion. I am currently considering this recommendation.

Recommendation 16 - We recommend that the Minister considers whether a requirement to undertake Health Impact Assessments should be included in the Bill at the development plan stage and for some types of planning application. Associated policy and guidance should be revised to ensure that the health impacts of development are appropriately considered.

The Strategic Environmental Assessment (SEA) Regulations already require health impacts to be comprehensively considered during the preparations of all plans and strategies. It currently applies to LDPs and would also apply to the proposed SDPs and NDF. Creating a stand alone Health Impact Assessment would therefore add unnecessary duplication.

The SEA, which forms part of the Sustainability Appraisal, is part of the evidence base which justifies and demonstrates the robustness of the plan.

We are working with key stakeholders, including health colleagues and the British Medical Association to ensure that the objectives of the health impact assessments can be achieved without recourse to primary legislation.

The new European Environmental Impact Assessment (EIA) Directive will result in improved emphasis on health consideration as part of the Environmental Assessments to accompany applications for EIA development. The assessment of

health will therefore be built into the EIA process when the new Directive is transposed.

Recommendation 18 - We recommend that the Minister brings forward amendments to enable the National Assembly for Wales to determine its own procedure for considering the draft National Development Framework and, as part of these amendments, the Minister removes any restriction on the Assembly's consideration of the draft National Development Framework, in particular the 60-day consideration period specified in Section 2 of the Bill.

The Bill does not prescribe the detail on how the Assembly should scrutinise the NDF, other than the time period. It is for the Assembly to determine if, for example, assistance from a planning expert would be advantageous to its deliberations. The precise mechanism is open for the Assembly to determine.

A specified period is felt to be necessary in order to ensure that the Assembly conclude its consideration of the NDF and that it is undertaken in a reasonable period. The current time period is 60 days, beginning with the day on which the draft is laid before the Assembly and disregards anytime when the Assembly is dissolved or in recess for more than 4 days. As I mentioned to the Committee, I am happy to consider a different time period but am of the view that a specified time period is necessary.

Recommendation 19 - We recommend that the Minister must amend the Bill to require Assembly approval of the National Development Framework.

It remains to be my view that the process set out in the Bill ensures robust scrutiny by the Assembly of the National Development Framework, but enables the Welsh Ministers to reflect and shape the NDF according to the Government's policies and priorities.

Recommendation 22 - We recommend that the Minister brings forward amendments to the Bill in order to enhance the pre-application arrangements that apply to Developments of National Significance applications and to outline these arrangements on the face of the Bill.

I do not consider it appropriate to include the pre-application arrangements for Developments of National Significance on the face of the Bill. These are detailed procedural issues, which have not been consulted upon and are more appropriately contained in secondary legislation. To set out these procedures in primary legislation would be inconsistent with arrangements for the pre-application process for major applications.

It is my intention to prescribe in secondary legislation enhanced pre-application arrangements for DNS which will be subject to consultation.

The Committee received evidence from stakeholders, including Energy UK that these processes need to be responsive to allow for changes to the DNS consenting process or to align it to changes to the consultation process for regular applications.

Recommendation 23 - We recommend that the Minister brings forward amendments to the Bill in order to make the regulations setting out which categories of development should be subject to the pre-application procedure are subject to the affirmative resolution procedure.

I do not agree that this provision should apply the affirmative procedure, as I consider the negative procedure is appropriate, as it is a technical matter of detail which may change from time to time. The use of these provisions will be informed by consultation and engagement with stakeholders. The level of engagement and consultation will ensure that the process will be transparent and open to comment from all. A consultation on the detailed aspects of the pre-application consultation procedure has recently closed.

Recommendation 24 - We recommend that subject to any matters of legislative competence, the Minister considers making water undertakers statutory consultees. We ask that the Minister reports back to us on his consideration of this issue by the end of March 2015.

I have asked officials to bring forward existing programed work to make Water and Sewerage Companies Statutory Consultees, on the basis that agreement can be reached between them as to the type and scale of applications that they will be consulted upon. They will be required to provide substantive responses within a specified time period for both pre-applications, and planning applications. I will report back to the Committee by the end of March 2015 on the progress of this matter.

Recommendation 25 - We recommend that the Minister amends the Bill to include the definition of what constitutes Development of National Significance on the face of the Bill, with a provision that would enable this definition to be amended that would be subject to the affirmative resolution procedure.

The purpose of prescribing the thresholds for DNS in secondary legislation is to ensure that the process can respond quickly to changing circumstances, such as where further devolved powers in relation to energy or other planning consents come to Wales or as new technologies and categories of development are introduced over time. I will be issuing further consultation to establish what should constitute DNS before these are defined in secondary legislation.

It is my view that having the original definitions and subsequent changes in separate legislation has the potential to confuse. The proposal in the Bill retains the criteria and thresholds in one place and provides more clarity.

Recommendation 26 - We recommend that the Minister sets out how he intends to decide above 50MW energy schemes in Wales should further devolution occur. In addressing this recommendation, we ask that the Minister is clear about whether the NSIP Development Consent Order process will be replicated for Wales; whether these larger schemes will be included in the Development of National Significance process; or whether some other process will apply.

Energy projects above 50MW are within the remit of the Minister for the Economy, Science and Transport. I have passed your comments onto my colleague as the Minister with portfolio responsibility. Nonetheless, the proposed system for DNS will be capable of handling on-shore energy projects above 50MW, should they become subject to planning permission.

Recommendation 27 - We recommend that the Minister takes steps to make it clear that Section 18 of the Bill could be used to give the Welsh Ministers the power to decide on Development of National Significance associated developments as well as secondary/ancillary consents.

My statement of policy intent makes it clear that the proposals for secondary consents will be able to handle planning permissions (associated development) connected to the DNS project and a selection of other key secondary consents. I replicate the statement here for ease of reference:

A number of secondary consent types have been identified, which may be appropriate to supplement an application for DNS. This section allows for those consents to be prescribed in secondary legislation, subject to the conditions at subsection 62H(3).

Those which are likely to be initially prescribed by regulations are:

- *Control of works affecting scheduled monuments, grant of scheduled monuments consent (Ancient Monuments and Archaeological Areas Act 1979 (s.2));*
- *Works on common land (Commons Act 2006 (s.38));*
- *Exchange of common land (Commons Act 2006 (s.16 and s.17));*
- *Restriction on placing rails, beams etc. over highway (consent) (Highways Act 1980 (s.178));*
- *Applications for hazardous substance consent; applications for consent without condition attached to previous consent and application to continue consent on change of control of land (Planning (Hazardous Substances) Act 1990 (s.4, s.13 and s.17));*

- *Control of demolition in conservation areas and authorisation of work, listed building consent Planning (Listed Buildings and Conservation Areas) Act 1990 (s.8 and 74);*
- *Requirement for planning permission & grant of planning permission (Town and Country Planning Act 1990 (s.57 and s.58));* ***[associated development]***
- *CPO acquisition of land for development (Town and Country Planning Act 1990 (s.226));*
- *Stopping up or diversion of highway (Town and Country Planning Act 1990 (s.247));*
- *Highways crossing or entering route of proposed new highway, etc. (Town and Country Planning Act 1990 (s.248));*
- *Extinguishment of rights of way over land held for planning purposes (Town and Country Planning Act 1990 (s.251));*
- *Acquisition of land in connection with highways (Town and Country Planning Act 1990 (s.254)); and*
- *Order-footpaths, bridleways or restricted byways affected by development (Town and Country Planning Act 1990 (s.257)).*

Additional regulations may add, amend or remove a consent from this list.

Recommendation 29 - We recommend that the Minister clarifies whether he intends to take responsibility for the issuing of environmental permits for Development of National Significance applications and, if he does, he brings forward amendments to the Bill to require Natural Resources Wales's consent before Welsh Ministers can decide on the issuing of environmental permits alongside the Development of National Significance process.

The proposals for what should be included as a secondary consent will be consulted on and contained in secondary legislation (I have agreed to explore an amendment to the Bill to make this subject to affirmative procedure). The consenting process for DNS and secondary consents will also be set out in secondary legislation, and will be subject to consultation.

The question of whether or not to include environmental permits will be considered as part of that consultation exercise.

Recommendation 31 - We recommend that the regulations for a national delegation scheme when introduced should follow the model proposed by the Welsh Government's own research – i.e. a national scheme with some local flexibility, with each local scheme still to be approved by Welsh Ministers.

A number of responses to the recent consultation suggested that there is a need for some local flexibility within the national scheme of delegation.

I have asked my officials to engage further with stakeholders to identify suitable measures that provide for a degree of consistency while remaining responsive to local circumstances. Notwithstanding this action, an approval process for local authority delegation schemes adds complexity to the planning system. It raises issues of how schemes would be assessed and the criteria to be used in that assessment. The criteria against which a scheme could be considered would need to be published, and this would in effect be a 'scheme of delegation' in itself. I therefore intend to look further at how local flexibility can be built into the delegation proposals but I do not intend to pursue a formal government approval process.

Recommendation 32 - We recommend that the Minister amends the Explanatory memorandum to the Bill to clearly explain how he intends to use the powers in Section 37 of the Bill.

In response to your recommendation, the Explanatory Memorandum will be updated before Stage 3 to provide further clarity in respect of how I intend to use the proposed powers in section 37. Further to this, a list of the application types that are to be prescribed in regulations and consequently included in the national scheme of delegation is attached at annex A.

As I mentioned above, officials will be engaging with stakeholders to identify specific application characteristics such as development size that will be subject to delegation requirements.

Regulations will not prescribe how the Local Planning Authority makes decisions about its other functions (such as discharging planning conditions, enforcement, Tree Preservation Orders etc.). LPAs will continue to make their own arrangements as they do now, in terms of delegation of these other functions.

Recommendation 33 - We recommend that the regulations for a national delegation scheme when introduced should require the referral of a planning decision to a committee when a local town or community council objects to an application.

A consultation on delegation proposals has recently closed and a wide range of stakeholders have responded. I have asked my officials to engage further with these stakeholders with an aim to issue an additional consultation in the autumn to inform the proposals to be prescribed in regulations.

It would therefore be premature to agree to such a detailed recommendation at this stage, however, the views of stakeholders concerning the merits and practical effect of the inclusion of an exception relating to objections by town or community councils will be sought.

Recommendation 36 - We recommend that the Minister brings forward an amendment to Section 42 of the Bill to reflect the Law Society's proposal, but this should include a requirement for an amended application to be returned to a Local Planning Authority to be consulted on again.

I do not accept this recommendation as this would be contrary to the provision in the Bill which have been designed to encourage better working relationships and more productive negotiations between applicants and local planning authorities and promote fairness in the appeals process for all parties.

There is an expectation that the local planning authority should have explored any potential amendments with the applicant that could have made the application acceptable before it came to a decision to refuse. Subsequently an appeal should be the course of last resort once that process has been followed and once an appeal is made the community has an expectation that a decision will be issued within a prescribed timescale. This recommendation will reduce the certainty that this will happen.

Further, this process could be used several times by an applicant thus creating inconsistency in how applications and appeals are handled and causing uncertainty and confusion for third parties and the community generally; in effect creating a revolving door for the application.

Recommendation 37 - We recommend that, before Section 44 is commenced, Circular 23/93 'Awards of costs incurred in planning and other (including compulsory purchase order) proceedings is updated to reflect the changes to costs recovery in appeal proceedings made by this Bill.

It is my intention to update Circular 23/93 prior to the introduction of new costs provisions.

Recommendation 38 - We recommend that the Minister brings forward amendments to Section 45 of the Bill to set minimum time limits for responding to requests for information resulting from appeals, call-ins and direct applications.

I would argue that time limits for requests for information are a detailed procedural issue and are more appropriately prescribed in secondary legislation rather than on the face of the Bill. The powers are more appropriate in secondary legislation as they need to allow different time limits commensurate with differing complexities of appeals and applications.

Further, this recommendation does not promote timely decision making as a minimum time limit for supplying additional information on appeals, call-ins or direct applications would mean that in practice an applicant who is in possession of all the

relevant information would have to delay providing this information until after the minimum time period had expired.

Recommendation 41 - We recommend that the Minister brings forward amendments to the Bill to remove Section 47 i.e. provisions that would reduce the time for submission of a Town and Village Green application from two years to one year.

In my view one year is a fair time to allow for an application for registration to be made. Once the application has been made there is further time for the preparation and evidence gathering required for the determination of the application, which is a separate process. I attach at Annex B an explanation of the procedures for registering an application for town or village green status and the evidence basis for the proposed change to the registration period.

Recommendation 42 - We recommend that the Minister brings forward amendments to remove Section 50 from the Bill i.e. provisions that would allow Welsh Ministers to set fees for applications to amend registers of common land and town or village greens.

There is already provision at section 24 of the Commons Act 2006 that enables the Welsh Ministers to prescribe a fee to be payable to the authority to whom the application to register a Town and Village Green is made. The proposal in Section 50 in relation to fees is a fair change. It allows the Welsh Ministers to make regulations for fees also to be payable to the determining authority for an application to register a Town and Village Green, if that is different from the registering authority.

The purpose of this provision being included in the Bill is to ensure that I can future-proof the process to allow for fees to be charged should economic or other circumstances change. This will safeguard services for the future.

Recommendations from the Constitutional and Legislative Affairs Committee's Stage 1 Report on the Planning (Wales) Bill

Conclusion 1 - We believe that it would have been helpful for the Explanatory Memorandum to have outlined in detail how the Bill has taken account of human rights issues given their relevance to matters of planning.

Human rights issues in respect of the Bill have been considered as part of the overall legal advice provided to Ministers. The Welsh Government consider the proposals contained in the Bill are compatible with Convention Rights given that planning is by its very nature required to balance the rights of the individual and the interests of the wider community.

Conclusion 2 - We believe that more detail should be placed on the face of Bill, particularly in relation to significant policy matters.

I have made no apologies for this Bill creating a framework; I would argue that framework legislation should not be condemned in all circumstances, there are instances where the detail of the legislation is simply too complex and lengthy to be contained in an Act, or because the details are constantly having to change to reflect a rapidly changing world. The exercise of powers contained in this Bill in many circumstances will require review and refreshing when the real world changes. These changes are not something which I am prepared to speculate on or attempt to wrongly enshrine in primary legislation, which would then require further primary legislation to ensure we as a legislature can keep up with the real world.

Prescribing such detail on the face of the Bill would at best require frequent revision of primary legislation and at worst reduce the lifespan of the Bill itself. In these circumstances therefore, I am firmly of the view that the balance between primary and secondary legislation is not only proportionate, but necessary.

A major Bill of this sort needs to create a framework. This Bill is needed to deal with the challenges, economic, social and environmental, that we face now. The subordinate legislation which follows will provide detail and will quite properly face scrutiny in its turn. In response to comments made about the Bill being a framework piece of legislation, this Bill either creates a framework for laws about planning in Wales or works within the existing framework. That is what a Bill of this nature should do.

I would further argue that there are good reasons for having so many provisions which rely on delegated powers. This Bill is the first part of a wider reform of Planning laws in Wales and we are using this Bill, as our first opportunity to use primary legislative powers, to make substantive changes to the existing legislative framework to ensure that planning functions in Wales work with devolved planning policy and deliver for the people of Wales.

Recommendation 1 – We recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 60D(1) of the Planning and Compulsory Purchase Act 2004.

This power enables the establishment of a Strategic Development Plan area and corresponding Panel, the establishment of which is subject to work by the responsible authority or the Welsh Ministers and will require consultation. The regulations will specify the details that cannot be known in advance of this process, allowing the LPAs to have the democratic responsibility to lead the process.

What is reserved for subordinate legislation are technical matters of detail relating to numbers of members and name of a Strategic Planning Panel that will be different depending on the individual circumstances of each panel. The negative procedure is

considered appropriate as this will require flexibility as the defined area or make up of the Panel may need changing in the future.

Recommendation 5 - We recommend that the Minister explains and clarifies during the Stage 1 debate on this Bill, the purpose of section 20 and how it will operate in practice, including:

- **the criteria to be used in determining whether a local authority is underperforming;**
- **the types of developments to which it will apply;**
- **what assessment he has made of whether a provision similar to that contained in section 62B of the Town and Country Planning Act 1990 would be appropriate.**

My statement of policy intent provides the majority of the detail sought in relation to the criteria to be used in determining whether a local authority is underperforming and the types of development to which it will apply. I replicate that information here for ease of reference:

The criteria to be applied in assessing and determining whether an LPA is underperforming, and should therefore be designated by the Welsh Minsters for that purpose, is likely to be drawn from the indicators contained in the proposed performance framework that establishes what constitutes a good LPA, which was set out in the Positive Planning consultation paper.

They are likely to focus on the LPA's performance in terms of efficiency and quality of determining planning applications, which could be assessed on the speed within which applications for major development are determined, and the extent to which such decisions are overturned at appeal.

The criteria to be applied in assessing and determining whether or not to revoke the designation could include the consideration of:

- *the capacity of the designated LPA to deal effectively with applications for major development in the future;*
- *the effectiveness of the designated LPA in dealing with those major applications that were submitted to them during the period of designation;*
- *the degree of improvement against areas of weakness identified in the initial performance assessment; and,*
- *the designated LPA's performance administrating applications that are submitted direct to the Welsh Ministers for determination, e.g. their performance as a consultee on such applications, and in undertaking any actions required by the Welsh Ministers to assist them in the processing and consideration of such applications.*

It is anticipated that the type of development to which the option to make direct applications applies will be limited to major development, as these types of proposals drive economic growth and have the greatest bearing upon communities.

The definition of major development is likely to be similar to that contained in article 2(1) of the DMPWO 2012, which formed part of the hierarchy of development consulted upon in the Positive Planning consultation paper issued in December 2013 and includes:

- *houses of 10 or more units or site areas 0.5ha or more;*
- *buildings with proposed floor space of 1,000 sq metres or more;*
- *development on a site of 1 hectare or more.*

The Bill specifies that a 'qualifying application' includes full, outline and reserved matters applications.

It excludes the ability for applications that fall within Section 73 of the TCPA 1990 (applications to vary or remove conditions) to be treated as a 'qualifying application', unless specified otherwise in regulations.
Applications to renew planning permission for major development deal with the principle of development. It is therefore proposed through regulations that renewal' applications are to be considered as a 'qualifying application.

Other types of applications that fall within Section 73 of the TCPA 1990, such as to vary or remove other conditions and in making material amendments to planning permissions, will continue to be submitted to the LPA for determination.

We will work with stakeholders to operate a continuous incremental approach to setting targets. Publishing the criteria supports this flexible approach rather than following section 62B.

Recommendation 8 - We recommend that the Minister should table an amendment to the Bill to apply the negative procedure to orders made in accordance with section 54(5)(b)(ii) of the Bill.

It is a longstanding principle of law that commencement orders are not subject to any procedure. This is because the legislature has already considered and approved the relevant provisions and the commencement order gives effect to the intention of the legislation. Further scrutiny, in my view, would be unnecessary on provisions that have recently been subject to such detailed scrutiny.

The transitional, transitory and savings provisions flow from commencement and are intended to provide for a smooth and fair transition between the 'old' and the 'new' law. This will be particularly relevant for planning matters as there will be many applications that are live and going through the decision making process under the 'old' law when the 'new' law comes into force. Without the use of transitional and

savings provisions, these applications would be subject to the 'new' law when they have already started a process using the 'old' law. This would be unfair and could cause considerable additional costs and delay, with some applicants effectively having to start the process again.

I am happy to amend the Explanatory Memorandum before Stage 3 to provide more detail on how the Welsh Government intends to use the transitional, transitory and savings provisions that will result from commencement orders made in connection with the coming into force of a provision of this Bill.

Recommendation 9 - We recommend that the Minister confirms categorically during the Stage 1 debate that the Queen's or Prince's consent is not required in respect of the Bill and that in so doing, he sets out the reasons for his view, taking account of the views we express at paragraphs 130 to 134 of this report.

As mentioned during the General Principles debate I have instructed my officials to write to Her Majesty, The Queen to seek express consent in relation to the Bill. The First Minister's Office wrote to the Her Majesty, The Queen on 25 February 2015. I will update the Assembly prior to the end of Stage 3 proceedings as required by Standing Order 26.67.

I have also tabled a number of Government amendments, some of which relate directly to recommendations made by the Committee and I would like to take this opportunity to outline these below:

Environment and Sustainability Committee

Recommendation 6 - We recommend that the Minister brings forward amendments to place a requirement on those formulating plans to undertake an assessment of the impact development plans will have on the Welsh Language when preparing, Local Development Plans, Strategic Development Plans and the National Development Framework. For Place Plans, a language assessment should form part of a general sustainability appraisal.

I have tabled a Government amendments (amendment numbers 1 to 3) to Section 60-62 of the PCPA 2004, making the Welsh language a mandatory element of the sustainability appraisal in the development of the National Development Framework and at all levels of the plan making process.

Recommendation 21 - We recommend that the Minister brings forward amendments to the Bill to remove voting rights from non-elected members of Strategic Planning Panels.

I have tabled a Government amendment (amendment numbers 7 to 9) to remove the voting rights for non-elected members of the Strategic Planning Panels. Further to

this I have also tabled Government amendments (amendment numbers 5 and 6) to remove the requirement for locally elected members to choose the non-elected members from a list published by the Welsh Ministers. This will allow for locally elected members to select the nominated members based on local needs and circumstances.

Recommendation 40 - We recommend that the Minister brings forward the amendments to Schedule 6 (Town and village greens: new Schedule 1B to the Commons Act 2006) of the Bill to remove trigger events, as outlined in his letter to the Chair dated 7 January 2015 at the earliest opportunity.

I have tabled a Government amendment (amendment numbers 19 to 22) to limit the right to register land as a town or village green only where a planning decision has been made.

Further, I have asked my officials to consider amendments in relation to the following recommendations, and subject to their approval, it is my intention to table these as soon as possible during Stage 2 (unless otherwise specified):

Environment & Sustainability Committee

Recommendation 13 - We recommend that the Minister brings forward amendments to the Bill to link it to the Well-being of Future Generations Bill. These amendments should include a formal link between the National Development Framework and the well-being goals.

I have committed to making a formal link between the Planning Bill and the Well-being of Future Generations Bill. It is my intention to make a formal link to the Well-being goals and the National Development Framework on the face of the Planning Bill. My officials are working together to achieve this during Stage 3 of the Planning Bill as this will allow for the National Assembly for Wales to have considered the Well-being of Future Generations Bill at Stage 3 and this will ensure the Planning Bill to makes correct reference.

Recommendation 17 - We recommend that the Minister brings forward an amendment to the Bill to specify the length of the consultation period for a draft National Development Framework on the face of the Bill. We recommend that such a period should be longer than 12 weeks.

I agree with the Committee that it would be useful to specify a statutory length of time for the formal consultation period for the draft National Development Framework. I have asked my officials to prepare an amendment for introduction during Stage 2.

However, I consider that a 12 week timescale for consultation is appropriate; as this is the period of statutory consultation and would not be the only consultation and

engagement exercise when preparing the National Development Framework. Currently, the Local Development Plan process has a statutory 6 week consultation period but in reality the pre-consultation engagement covers a significantly longer period.

As with the progression of Local Development Plans there will be a series of consultation and engagement events undertaken to inform the emerging National Development Framework. Details of these events including how and when they will take place will be set out in the statement of public participation. The consultation and engagement events will include a variety of different approaches depending on the audience and stage of plan development but could include, roadshows, questionnaires etc.

These events will help to shape the draft National Development Framework that would be formally consulted upon over the statutory 12 week period. The statement of public participation will also set out the details of how this consultation will take place and will set out a clear timetable for preparing the plan to give all stakeholders advance warning of key engagement dates, thereby ensuring they are prepared to engage at the appropriate time.

A variety of engagement techniques could be used to ensure everyone who wants to be involved has the opportunity to engage in the preparation of the National Development Framework. The type of engagement used may vary by target audience such as members of the public, development industry, environmental groups etc., time of plan production and part of plan production i.e. designation or broad policy. This could include:

- Exhibitions & Roadshows;
- Website;
- Launch by Minister;
- Social Media; and
- Press adverts

Focused engagement with Stakeholders could include:

- Direct correspondence; and
- Targeted stakeholder meetings & workshops.

Focused engagement with members of the public could include:

- Ensuring a plain language approach to documents and website;
- Ensuring documents are bi-lingual;
- More informal way of commenting such as social media, map based response form;
- Ensuring key information is presented in a user friendly format;
- Online Q&A with Minister; and
- Roadshows in particular areas of change.

These approaches could be interchangeable for different groups but give a broad outline of the types of engagement techniques available to steer the production of the draft National Development Framework.

Recommendation 20 - We recommend that the Minister brings forward amendments to the Bill to specify the period for which the National Development Framework is to have effect.

In line with other plans, I consider it would be consistent for the National Development Framework to specify the period for which it has effect. I have asked my officials to explore a Government amendment to the Planning (Wales) Bill to ensure that the time period and end date of a National Development Framework (NDF) for Wales are specified.

Recommendation 28 - We recommend that the Minister should bring forward amendments to the Bill in order to include a list of secondary consent that could be decided directly by the Welsh Ministers alongside a Development of National Significance application on the face of the Bill, with a power to amend the list by affirmative resolution. If the Minister is not inclined to make such an amendment, we believe that he should bring forward amendments to ensure that any order made to define these types of consent should be subject to the affirmative procedure.

I am grateful to the Committee for providing an option in respect of the application of this recommendation. I am of the view that it would not be appropriate to set out the list of secondary consents that could be decided in connection with DNS applications because this process needs to be responsive to ensure that it captures the consents that will be relevant to the DNS applications in the future. For that reason, I have asked my officials to explore an amendment to Bill to require the affirmative procedure for prescribing the secondary consents in relation to DNS applications.

Recommendation 30 - We recommend that the Minister brings forward amendments to the Bill in order to establish a statutory maximum timescale within which Developments of National Significance and associated secondary consents will be determined by Welsh Ministers after such an application has been formally submitted. In cases where this timescale is not met, these amendments should include a provision that requires Welsh Ministers to lay a statement before the National Assembly for Wales explaining the reasons for this timescale being exceeded.

I have considered this to be a fair expectation and have asked my officials to consider a Government amendment to the Bill to prescribe a maximum statutory timescale for determining Developments of National Significance on the face of the Bill. I have also asked my officials to explore a Government amendment which will require the Welsh Ministers to lay an annual report to the National Assembly on the

Welsh Minister's performance against the statutory time scale. I believe this would be consistent with arrangements for local planning authorities and statutory consultees to report on their annual performance.

Recommendation 34 - We recommend that the Minister brings forward amendments to Section 37 of the Bill to make the regulations under Section 319ZB of the Town and Country Planning Act 1990 that allow Welsh Ministers to prescribe requirements relating to the size and composition of planning committees subject to the affirmative resolution procedure.

Due to the impact on local planning authorities I have asked my officials to prepare a Government amendment to prescribe that the regulations relating to the size and composition of planning committees will be subject to the affirmative resolution procedure.

Recommendation 35 - We recommend that the Minister brings forward amendments to the Bill to make the planning committee protocol statutory.

I have asked my officials to explore an amendment which will introduce a statutory basis for the planning committee protocol on the face of the Bill.

Recommendation 39 - We recommend that the Minister retains the primary legislative requirement for Design and Access Statements by removing Section 27 and that associated secondary legislation should be amended to only require statements for larger developments and listed buildings.

The recent consultation on Design in the Planning Process identified substantial support for the retention for Design and Access Statements for larger developments and those in sensitive locations. In light of this significant support for their retention, and the recommendation of the Committee, it is proposed that a Government amendment is tabled that seeks to remove Section 27 of the Bill.

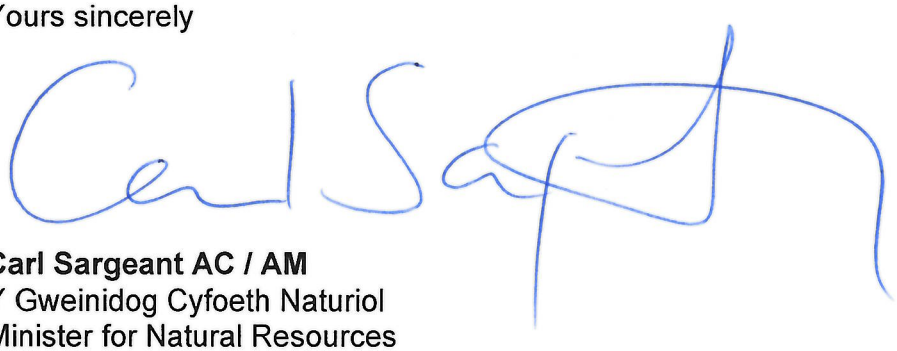
Constitutional & Legislative Affairs Committee

Recommendation 7 - We recommend that the Minister should table an amendment to section 53(1) of the Bill to delete the words "as they consider appropriate in connection with" and insert in their place "as they consider necessary for the purpose of, or in consequence of giving full effect to any provisions of".

I am considering an amendment to amend the wording in Section 53(1) to reflect the comments of the Committee.

I hope that the information provided in this letter will assist Committee Members in their scrutiny of the Planning (Wales) Bill at Stage 2. I look forward to working with you and the Committee as the Bill progresses through Stage 2 and I would like to offer a meeting to clarify any of the issues raised above and to discuss how we can work together to progress the Bill.

Yours sincerely



Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

CC: Chair Constitutional & Legislative Affairs Committee

Annex A - list of the application types that are to be prescribed in regulations and consequently included in the national scheme of delegation

Town and Country Planning Act 1990:

S62 & S70 – Applications for planning permission

S73 – Applications to vary/remove conditions (including renewals and minor-material amendments).

S73A – Retrospective applications for planning permission

S92 – Outline planning permission

S96A – Applications for non-material amendments

S316 – Applications for planning permission made by LPAs, or relating to land of interest to LPAs.

S191 – Application for certificate of lawfulness of existing use of development

S192 – Application for certificates of lawfulness of proposed use or development

S220 – Applications for advertising consent (made under the Town and Country Planning Applications (Control of Advertisements) Regulations 1992

Planning (Listed Building and Conservation Areas) Act 1990:

S16 – Applications for Listed Building Consent.

S19 – Applications for variation or discharge of conditions

S74 – Applications for Conservation Area Consent (for demolition).

S82 – Applications relating to land and works of LPA

Planning (Hazardous Substances) Act 1990:

S9 – Applications for hazardous substances consent.

S13 – Applications to vary or remove conditions on hazardous substances consent.

S18 – Applications for continuation of hazardous substances consent.

Section 47 Planning (Wales) Bill: The reduction of the period for making certain applications for registration

Provision in the Planning (Wales) Bill

Section 47 of the Planning Wales Bill amends section 15(3)(c) of the Commons Act 2006 so as to reduce the period within which a town or village green ("TVG") application can be made (after the requisite 20 years of recreational use "as of right" has ceased) from two years to one year. It also repeals existing law applicable to England only.

Environment and Sustainability Committee recommendation

Recommendation 41 of the Planning (Wales) Bill Stage 1 Committee Report by the Environment and Sustainability Committee recommends that the Minister brings forward amendments to the Bill to remove Section 47 from the Planning (Wales) Bill. The report does not present a reason for this change.

Supporting evidence for change

As part of their consultation on reforms to the TVG registration system[1], DEFRA had received evidence which suggested that while some felt that the two year period of grace for registering new greens was too short; the majority felt it was too long [2]. This change was taken forward in the Growth and Infrastructure Act 2013, which amended section 15 of the Commons Act 2006 to reduce the period in which a TVG application can be made (after the requisite 20 years of recreational use "as of right" has ceased) from two years to one year.

Evidence has been received in Wales which suggests that the TVG registration system is used to frustrate development rather than for the purpose of protecting an important area of land[3]. The provision at section 47 of the Planning (Wales) Bill forms a package of reforms which seeks to remedy the negative way in which the TVG registration system is used.

In their evidence to the Committee, the Open Spaces Society's main objection to the proposals was their fear that people will not know that the land that they have used "as of right" is under threat from a proposed development until it is too late to save it[4]. This evidence makes no specific mention of the reduction of the period of grace from two years to one year, and relates mainly to the trigger and termination events at Schedule 1B. Their evidence does not counter the view that the planning process

[1] DEFRA: Consultation on the registration of new town or village greens, July 2011
[2] DEFRA: Town and Village Green consultation: Summary of responses, November 2012
[3] Welsh Government: Positive Planning, November 2013
[4] Open Spaces Society: Evidence to the Environment and Sustainability Committee, 27 November 2014

provides ample opportunity for the community to comment on the future use of land, where a proposal to develop a site is made.

We consider that our proposal to change the 2 year period of grace will have a positive impact in removing a prolonged period of uncertainty for developers and communities where land has ceased use "as of right".

One of the perceptions of the TVG registration system is that significant time and resources are required to compile and submit an application to register a TVG. Hence, there is a perceived requirement for a two year period of grace. It is our view that the work required to produce an application to register a TVG does not merit a two year period of grace as one year provides ample opportunity for the community to produce an application and to become aware that land is no longer used "as of right".

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 sets out the requirements to be contained in applications to register TVGs. Those requirements are[5]:

- The TVG application form and statutory declaration[6], signed by the applicant or duly authorised officer of applicants which are bodies;
- A map of the site at a scale of at least 1:2,500; and
- A copy of any other documents which support the applicant's case.

We consider the requirements of the application to be less onerous than that to produce a planning application, as there is no requirement for technical information or surveys. The more complex information required by the application form comes in the form of a justification of the proposed registration from the applicant. This is simply a statement, and others may be provided from witnesses.

The bulk of the work relating to applications to register TVGs is undertaken by the Commons Registration Authority following the presentation of an application to register a TVG which complies with the minimum standards set out in the Regulations. At this point, an application to register a TVG would have already been made within the period of grace. The remit of the Commons Registration Authority will be to look carefully at the evidence supplied with the application, and they may accept or invite further evidence from the applicant or third parties after the submission of the application. They may also decide to inquire into the application

[5] Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007; Regulation 3

[6] TVG application form and statutory declaration: http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/guidelines-on-the-commons-act-2006/section-15-application-form/?lang=en

through either a hearing, inquiry or a case before the Council's relevant committee of the authority, to test the evidence impartially.

The DCLG issued a call for evidence in their consultation on the registration of new town or village greens in July 2011 asking TVG applicants to quantify the time spent gathering evidence from potential users of an application site. In response to that consultation the time taken ranged from 9 days to 22 days[7]. This time is taken to include the information gathered before the making of an application as well as after the submission of an application to register a TVG.

We therefore consider the change at section 47 of the Planning (Wales) Bill gives a proportionate amount of time to gather sufficient evidence to submit an application to register a TVG.

[7] Reforms to the town and village green registration system: Impact Assessment No: Defra1470, September 2012.

Agenda Item 6

Document is Restricted

Agenda Item 7

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