



Llywodraeth Cymru  
Welsh Government

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# Report on the implementation of Law Commission proposals

February 2016

Presented to the National Assembly for Wales pursuant to Section 3C of the Law Commissions Act 1965 as inserted by Section 25 of the Wales Act 2014.

**OGL**

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## **Introduction**

I am pleased to present this report which relates to the implementation of Law Commission proposals. This is the first annual report to be presented following the passing of the Wales Act 2014.

The Wales Act 2014, which came into force on 17 February 2015, amends the Law Commissions Act 1965 to place a duty on the Welsh Ministers to report to the National Assembly for Wales each year on the extent to which Law Commission proposals relating to Welsh devolved matters have been implemented by the Welsh Ministers. This report covers the period from 17 February 2015 to 16 February 2016.

The Wales Act 2014 also provides the statutory basis for the protocol between the Welsh Ministers and the Law Commission. The protocol was agreed in July 2015 and sets out how the Welsh Ministers and the Law Commission should work together on law reform projects.

The Welsh Government is committed to Welsh legislation that is consistent with the rule of law, is effective and is accessible to the ordinary citizen. The work of the Law Commission is a crucial component of this endeavour, and I am pleased that the Wales Act 2014 and the protocol now place this on a statutory basis.

This report demonstrates that the Welsh Government is implementing the excellent work of the Law Commission. For the first time in the history of the Law Commission, the Twelfth Programme of Law Reform includes projects that relate solely to Welsh devolved matters. I look forward to the outcome of both the review of planning law in Wales, as well as the advisory project on the form and accessibility of the law applicable in Wales. I believe these projects will lead to the implementation of further Law Commission proposals over the coming years.

**The Right Honourable Carwyn Jones AM  
First Minister of Wales**

**16 February 2016**

## **Scope of the report**

1. Section 3C of the Law Commissions Act 1965, as inserted by Section 25 of the Wales Act 2014, places a duty on the Welsh Ministers to report to the National Assembly for Wales each year on the extent to which Law Commission proposals have been implemented by the Welsh Government.
2. This is the first annual report to be published by the Welsh Ministers under the Act. The report covers the period from 17 February 2015 to 16 February 2016.
3. As stipulated by the Act, the report covers Law Commission proposals relating to Welsh devolved matters that have been implemented by the Welsh Government during the year, proposals relating to Welsh devolved matters that have not been implemented, including plans for implementation and decisions taken not to implement proposals.
4. The report only covers the reports of the Law Commission of England and Wales as far as they relate to Welsh devolved matters.

## **Proposals that have been implemented**

### **Reform of the Rented Housing Sector**

5. The Renting Homes (Wales) Act 2016 is based on a draft Bill provided by the Law Commission following the completion of their project into the reform of the rented housing sector. The Law Commission was asked by the Welsh Government to review and update its recommendations for the reform of housing law, in the light of the Welsh Government's commitment to introduce, during the lifetime of the current Assembly, a housing bill modelled closely on the Law Commission's proposals. On 9 April 2013 the Law Commission published their Report on Renting Homes in Wales.
6. The Renting Homes (Wales) Bill was introduced into the Assembly on 9 February 2015 and received Royal Assent on 18 January 2016.
7. The Act is one of the most significant pieces of legislation of this Assembly and will help over one million people in Wales who rent their home. The Act improves and simplifies the arrangements for renting homes by replacing many different and complex pieces of legislation with one main piece of legislation. It also replaces the huge number of different types of tenancies and licences with just two types of contract – one for the private rented sector and one for the social rented sector.

### **Adult Social Care**

8. The Social Services and Well-being (Wales) Act 2014 implements the majority of the recommendations made in the 2011 Law Commission report on Adult Social Care. The Act received Royal Assent in May 2014 and is due to come into force on 1 April 2016.

### **Regulating Health and Social Care Professionals**

9. The Regulation and Inspection of Social Care (Wales) Act 2016 was informed by the Law Commission 2014 report and draft bill on the regulation of health workers in the UK and social care workers in England. The Law Commission report provided significant evidence and guidance for the development of workforce regulation in the Act, which improves the quality of care and support in Wales and strengthens protection for citizens.
10. The Bill was introduced on 23 February 2015 and received Royal Assent on 18 January 2016.
11. The Act reforms the regulatory regime for care and support services and establishes requirements for local authorities and Welsh Ministers to undertake assessments of the sector's future stability. It reforms the

inspection regime for local authority social services functions, and reconstitutes and renames the Care Council for Wales as Social Care Wales, and broadens its remit. The Act also defines the regulation of the social care workforce.

### **Environmental control of animal and plant species**

12. In February 2014, the Law Commission published a report 'Wildlife Law: Control of Invasive Non-native Species' (as part of its review of wildlife law). This particular element of a wider project on Wildlife law was accelerated at the request of UK Government's Department for Environment, Food & Rural Affairs and the Welsh Ministers to enable earlier consideration of the introduction of legislation on the issue.
13. Part IV of the (UK) Infrastructure Act 2015 provides for Species Control Agreements and Species Control Orders for invasive non-native species of animal or plant, and was informed by the Law Commission 2014 report. Part IV of the Act commenced on 12 April 2015 in relation to Wales.

## **Proposals that have not yet been implemented**

### **Wildlife Law**

14. A wildlife law project was proposed by the UK Government's Department for Environment, Food and Rural Affairs for inclusion in the Law Commission's Eleventh Programme of Law Reform. The project includes consideration of the law relating to the conservation, control, protection and exploitation of wildlife in England and Wales. The terms of reference were: *"To review the law on the protection, management, use and welfare of wildlife in England and Wales, and to make recommendations for its simplification and modernisation."*
15. The project was about the framework of the law, rather than changes to current policy. The Law Commission was therefore asked to make proposals which do not require a departure from existing policy, except where this is needed to improve compliance with the European Directives (Habitats and Birds Directives).
16. The Law Commission published its final report and draft Bill on proposals for the reform of wildlife law in England and Wales in November 2015. The report contains 287 recommendations, many of a technical and complex nature.
17. The Welsh Ministers are currently considering the Law Commission's proposals.

### **Current Law Commission Projects**

18. A number of Law Commission projects relating to devolved Welsh matters are currently underway as part of the Twelfth Programme of Law Reform. One project – relating to Electoral Law – covers the whole of the UK and is a tripartite project conducted jointly with the Scottish and Northern Ireland Law Commissions.
19. The proposals that come from these projects will therefore be the subject of future reports and are set out below for information.

### **Planning and development control in Wales**

20. This project is reviewing the law relating to town and country planning in Wales, and will make recommendations to simplify and modernise the law, having regard to the current programme of reform through the Planning (Wales) Act 2015. Although the terms of reference are wide, the initial focus of the project was on the development management and its relationship with the development plan system.

21. To inform the project, the Commission undertook a critical examination of the way in which the development management process operated in law and in practice, and explored the possibility of strengthening the link between development management and plan making.
22. In undertaking this exercise the Commission did not discover fundamental flaws in the development management system or an urgent need for substantive reform. However, what was clear was a need for a broader simplification of the law. In particular, the review highlighted that the law is unnecessarily complicated and, in places, difficult to understand.
23. Consequently, the project has been restructured to focus on delivering consolidation and simplification of planning legislation. It will provide recommendations on the terms of simplified and consolidated planning legislation in Wales, so as to replace and integrate existing legislation into a new planning Act or Acts for Wales.
24. The Law Commission are due to publish a scoping paper in spring 2016, which will aim to establish the extent of reform needed to planning legislation from a simplification and consolidation perspective. This will be followed by a more detailed consultation paper.

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

25. This project is considering the current arrangements for the form, presentation and accessibility of the law relating to Wales, and will make recommendations to secure improvements in those aspects of both the existing law and future legislation.
26. A consultation paper was published in July 2015, which considered a number of matters including consolidation, codification, effective systems for making law, processes to allow policy and law-makers to take a more considered view of the law as a whole before making new legislation, embedding the Welsh language into the law-making process, and making legislation more accessible to the public.
27. The consultation closed in October 2015 and the report, which will make recommendations to the Welsh Government, is expected in spring 2016.

### **Electoral Law**

28. The Law Commissions of England and Wales, Scotland and Northern Ireland are currently reviewing electoral law and will be making recommendations for change. The aims of the project are to consolidate the many existing sources of electoral law, and modernise and simplify the law, making it fit for elections in the 21st century.



29. A final report and Bill is expected in early 2017. Under proposals published by the UK Government in the draft Wales Bill, the National Assembly for Wales would gain legislative competence during 2017 in respect of Assembly and Welsh local government elections. On the assumption this happens, it would then fall to the Welsh Government and the National Assembly to consider, and if appropriate give effect in legislation to, the report's recommendations as they relate to Assembly and local government elections in Wales.

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

30. The UK Government's Department of Health has sponsored a Law Commission project on the law of mental capacity and deprivation of liberty. The project relates to mental capacity law in England and Wales, and it is the Welsh Ministers who make regulations in respect of Wales under the Deprivation of Liberty Safeguards (DoLS). Legislative competence for mental health is also devolved to Wales.
31. The Law Commission published a consultation paper on 7 July 2015 which has now closed. A final report, including recommendations and a draft Bill is expected in 2016.

## **Decisions taken not to implement**

32. There are no Law Commission proposals relating to Welsh devolved matters that the Welsh Ministers have decided not to implement.