



Llywodraeth Cymru
Welsh Government

Report on the implementation of Law Commission proposals

February 2018

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

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Introduction

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

The Act amended 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 2017 to 16 February 2018.

This report provides an update on the work of the Welsh Government over the last year in relation to Law Commission proposals, including those contained in the report on the Form and Accessibility of the Law Applicable in Wales. I also look forward to the outcome of other Law Commission reviews that relate to Welsh devolved matters, including the project relating to planning law in Wales.

The progress highlighted in this report demonstrates the importance with which the Welsh Government regards the proposals of the Law Commission.

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

16 February 2018

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 third annual report to be published by the Welsh Ministers under the Act. The report covers the period from 17 February 2017 to 16 February 2018.
3. As stipulated by the Act, the report covers Law Commission proposals relating to Welsh devolved matters that have been implemented by the Welsh Government during the year, and proposals relating to Welsh devolved matters that have not been implemented, including plans for implementation and decisions taken not to implement proposals.
4. The report only covers the reports of the Law Commission of England and Wales as far as they relate to Welsh devolved matters.

Proposals that have been implemented

Regulating Health and Social Care Professionals

5. 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 resultant Act, which received Royal Assent on 18 January 2016, seeks to improve the quality of care and support in Wales and strengthens protection for citizens.
6. The 2016 Act is being brought into force and implemented in three stages. The first of these stages took effect on 3 April 2017. It gave effect to the reconstitution, broadening of the remit and renaming of the Care Council for Wales as Social Care Wales and the regulation of the social care workforce. The second and third stages, both now commenced, address the regulatory regime for care and support services and other related matters.

Proposals that have not yet been implemented

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

7. The Law Commission published their report on the form, presentation and accessibility of the law relating to Wales on 29 June 2016. The report made a number of recommendations to the Welsh Government that seek to secure improvements in those aspects of both the existing law and future legislation in Wales.
8. The Welsh Government issued its final response on 19 July 2017. The report provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the laws of Wales are more accessible. The Welsh Government was able to accept, or accept in principle, all except one of the recommendations for the government. The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication.

Mental Capacity and Deprivation of Liberty

9. The UK Government's Department of Health 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. Whilst the Mental Capacity Act is a UK Act the Welsh Ministers do have regulation-making powers under it in respect to Wales.
10. The Law Commission published its Final Report "*Mental Capacity and Deprivation of Liberty*" on 13 March 2017 making recommendations for legal reform including a draft Bill. The UK Government's Department of Health published an interim response on 30 October 2017 setting out a process of engagement with a range of stakeholders in England and Wales to understand in greater detail how changes can be implemented. It announced that a Final Response will be published in Spring 2018 with a more detailed response to the specific recommendations set out by the Law Commission at that time.
11. The Welsh Government will consider in detail any proposals put forward by the UK Government on this issue, to establish whether any fall within the legislative competence of the National Assembly for Wales.

Current and Future Law Commission Projects

13th Programme of Law Reform

12. The Law Commission published its 13th Programme of Law Reform on 14 December 2017. The Programme includes 14 new areas of law which will be the subject of Commission reviews. The Commission and the Welsh Government have been in discussion with a view to identifying a Wales-only law reform project. At the time of publication these discussions had not yielded a specific area suitable for a Wales-only law reform project. However, the Commission has put aside resources to support at least one Wales-only project in the Programme, and the Welsh Government and Commission are confident that we will be able to identify an appropriate area of work, which would be taken on by the Commission as a Ministerial reference from the Welsh Government and conducted alongside the main Programme.

13. The 13th Programme can be found here:

<https://www.lawcom.gov.uk/13th-programme-of-law-reform/>

Planning Law in Wales

14. This project reviews the law relating to town and country planning in Wales. It will make recommendations on the terms of simplified and consolidated planning legislation, with the aim of replacing and integrating existing primary legislation into a new consolidated Act or Acts to form part of a Planning Code for Wales.

15. Informed by the responses to the Planning Law in Wales: Scoping Paper (June 2016) and a comprehensive review of the legislation and relevant case law, the Commission finalised for consultation their conclusions as to the scope of the project and their proposals for technical reform. The detailed consultation paper was published on 30 November 2017 with responses to be submitted to the Commission before 1 March 2018. A programme of engagement with key stakeholders from the private, public and third sectors has also been undertaken by the Commission during this three month consultation period.

16. Informed by the responses received to the consultation the Commission will produce a final report for publication during summer 2018 setting out their final recommendations for consideration by the Welsh Government.

Decisions taken not to implement

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