

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

PLANNING LAW IN WALES Cyfraith Cynllunio yng Nghymru

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The Law Commission Comisiwn y Gyfraith

Independent statutory body

- Role to keep the law in England and Wales under review and promote reform, simplification and modernisation
- More than two-thirds of recommendations have been implemented
- Currently just starting our 13th programme of law reform

Planning Law in Wales: the project Prosiect Cyfraith Cynllunio yng Nghymru

- Project is first codification exercise since our report on The Form and Accessibility of the Law in Wales
- Part of 12th programme of law reform
- Proposed by Welsh Government
- Terms of reference: to review the law relating to town and country planning and make recommendations to simplify and modernise the law
 - Scoping Paper 2016

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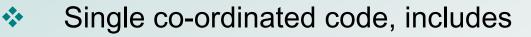
Background Cefndir

- Planning law is fragmented, complex and difficult to understand
 - especially in Wales!
- Since 2000, six Acts of Parliament and four Acts of the Assembly amending the TCPA 1990 etc
- Difficult to determine whether amendments made to existing legislation apply in Wales only, in England only, or in both Wales and England

"Extent" and "Application" "Radd" a "chymhwys"

- Most Acts of UK Parliament <u>extend</u> to England and Wales
 - including Welsh Development Agency Act 1973, and Norfolk and Suffolk Broads Act 1988
- Some obviously <u>apply</u> only to England (or part of England) or only to Wales
- Some apply to one or other, but not obvious which
- Some apply to both, but wording different
- Some apply to both, but only brought into force in one

Planning (Wales) Code Cod Cynllunio (Cymru)



- Planning (Wales) Act
- Secondary legislation
- Government guidance

Planning (Wales) Act 2020 Deddf Cynllunio (Cymru) 2020

- Single source of all primary legislation on planning as it applies in Wales; drafted by OLC
- Replaces TCPA 1990 (exc, possibly, compy purchase) and Planning (Wales) Act 2015
- Also replaces PCPA 2004 (Parts 4, 5, 7) and
 - LGPLA 1980 (Parts 15-18) and New Towns Acts
 - Planning and Compensation Act 1991 (Part 1)
 - Planning Act 2008 (Parts 9(2), 11) and
 - Localism Act 2011 (Part 6(2))

But not just consolidation ... Ond nid atgyfnerthu yn unig...

- The production of a new Code is an opportunity to introduce technical reforms
- Hence the involvement of the Law Commission
- Law Commission launched in December 2017 a major Consultation Paper on *Planning Law in Wales*
- Sets out over 180 possible technical reforms

Technical reform Diwygiad technegol

- Technical reforms aimed at improving the clarity, consistency and accessibility of the law
- Not intended to introduce policy change
- Reforms relate to:
 - Lack of definitional clarity or inconsistency in wording
 - Discrepancies
 - Obsolete, duplicative and uncommenced provisions
 - Provisions not reflecting established practice

Scope of Planning (Wales) Act Cwmpas Deddf Cynllunio (Cymru)

- General principles underlying planning system
- The development plan
- Development management (applications, appeals)
- Supplementary provisions (infrastructure provision, revocation, purchase notices etc)
- Special controls (advertisements, trees)
- Regeneration, improvement

5. Introductory provisions Darpariaethau rhagarweiniol

Duty to have regard to

- the development plan
- all historic assets, settings etc
- Government policy, so far as relevant
- impact on use of Welsh language
- other relevant considerations

Sustainable development (in Wellbeing Act 2015)

5. Introductory provisions Darpariaethau rhagarweiniol

- Local authorities and national park authorities as "planning authorities"
- Omit enterprise zone authorities, urban development corporations, etc, etc
- Planning inspectorate: "inspectors" or "examiners" rather than "persons appointed"

6. Formulation of development plan Llunio'r cynllun datblygu

- National Development Framework
- Strategic development plans
- Local development plans

Strategic environmental assessment (SEA) v sustainability appraisal (SA)

Planning blight

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7. Need for a planning application Yr angen am gais cynllunio

- Demolition dealt with in GPDO
- Increase in floorspace to be development
- Change in number of residential units
- EZ schemes and SPZs to be abolished
- Certificates of lawfulness (CLOPUDs and CLEUDs):
 - uncoupled from enforcement
 - application for certificate automatically included with planning application

8. Applications to the planning authority Ceisiadau i'r awdurdod cynllunio

Single type of application – to replace:

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- application for full permission, with conditions reserving details for subsequent approval, and
- application for outline permission, with subsequent approval of reserved matters
- Section 327A (duty to reject non-complying application) to be scrapped
 - Section 70B (prevents twin-tracking) to be scrapped

8. Applications to the planning authority Ceisiadau i'r awdurdod cynllunio

- Conditions and limitations brought together
- Newbury test for conditions included in Act
- Pre-commencement conditions law clarified: planning authority may categorise them as genuine or otherwise

(cf Whitley, Hart Aggregates)

- Tighten up rules as to approval of details
- Procedures to vary permission harmonised

9. Applications to the Welsh Ministers Ceisiadau i Weinidogion Cymru

- Underperforming authorities: new procedures (incorporated in Planning (Wales) Act 2015) to be included
- DNS applications: new system incorporated
- Planning inquiry commissions scrapped

10. Provision of instructure etc Darparu seilwaith

- ** Community Infrastructure Levy (CIL) to be included **
 - Planning obligations (s 106) to be included
 - Breach of obligations to be enforceable
 - Resolution of disputes as to obligations
 - Obligations to bind land of planning authorities
 - Obligations by prospective purchasers
 - Benefits to be secured by obligations (reg 122)
 - Two systems to be harmonised in the long run

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11. Appeals and supplementary provisions Apeliadau a darpariaethau atodol eraill

- Appeals to be dealt with as applications at first instance
- All appeals to be dealt with by inspectors except as provided otherwise (not vice versa, as at present)
- Principles of costs awards to be in statute

- Provisions as to purchase notices, revocation orders etc to be included
- Sections 249, 250 of TCPA 1990 not to be kept (power to extinguish public rights)

12. Unauthorised development Datblygiad anawdurdodedig

- Notices under s171C and s330 (seeking information) to be merged
- Enforcement restrictions to be widened to include all "dwellings", not just dwellinghouses
- Deemed planning application to be omitted
- Service of stop notices to be modified
- Criminal penalties to be harmonised

At present, three overlapping systems:

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- Demolition of listed building: LBC
- Internal works: listed building consent (LBC)
- External works: LBC and planning permission (sometimes granted by GPDO)
- Works affecting setting: planning permission (sometimes granted by GPDO) but not LBC
- Demolition in CA: CAC (plg perm in England)
- Other works in CA: planning permission

- Possible simplification: define "development" to include all works affecting special character of listed building [as well as demolition]
- Listed building consent and conservation area consent then not necessary
- Unauthorised works [without planning permission] to remain a criminal offence
- Adjust enforcement procedures accordingly
- Consider fees regime

- One application (policy tests as at present)
- Certificate of lawfulness procedure would be available
- Stop notices would be available

- Scheduled monument consent not included
- Curtilage to be defined (as per *Calderdale*) and date of curtilage clarified
- Areas of archaeological importance scrapped

14. Outdoor advertising Hysbysebu yn yr awyr agored

- Definitions tightened up
- Discontinuance notice procedure improved
- Deemed consent for advertisements with planning permission, those on vehicles (off the highway), and those on sites more than 10 years old)
- Introduce Certificate (CLOPUD / CLEUD) procedure to check need for consent
- LPA to be able to remove all unauthorised advertisements, not just posters and placards
- Fines to be increased

15. Works to protected trees Gwaith i goed a warchodir

- "Amenity" to be defined to include age, rarity, biodiversity etc, as well as appearance.
- Area TPOs to be converted into individual or group orders on confirmation
- "Dead and dangerous exemption to be tightened up"
- "Nuisance" exemption to be removed
- Saplings" exemption to be introduced
- Certificate procedure to apply to tree works
- Replacement to be planted "at or near" site of removed tree

15. Works to protected trees Gwaith i goed a warchodir

- Prohibition to apply to "intentional or reckless" damage, not just "wilful" damage etc
- Single offence, triable either way
- Replacement to be planted "at or near" site of removed tree
- Application for TPO consent not necessary following notification of works to CA tree

16. Improvement, regeneration and renewal Gwella, afywio ac adnewyddu

- Unsightly land notices (TCPA, s 215): to be served only where condition of land does not arise from lawful use
 - s 215 appeals to be dealt with by inspectors
- Procedures under s 215 and NPACA, s 89 (allowing planning authority to take positive action) to be merged
- Graffiti and fly-posting regulations to be introduced
- Old-style enterprise zones to be abolished
- New towns, UDCs, housing action trusts, and rural development boards to be abolished

17. High Court challenges Heriau yn yr Uchel Lys

- Since Criminal Justice and Courts Act 2015, challenges to planning decisions under TCPA 1990, Pt 12 to be made within 6 weeks, require permission
 - as for applications for JR under CPR, Pt 54
- No need for Part 12; but preclusive provisions still required to prevent collateral challenges

18. Miscellaneous and supplementary Amrywiol ac atodol

- Provisions as to statutory undertakers to be rationalised
- Mining operations: definitions to be simplified; provisions as to pre-1982 permissions not to be restated
- Welsh Ministers to have powers (but not duty) to impose charges for all planning functions
- Definitions to be clarified ("dwellinghouse", "agriculture", etc)

Secondary legislation and policy Deddfwriaeth eilaidd a pholisi

- Some secondary legislation separate since 1991; all new legislation separate now
- Some E&W regulations still apply in Wales (notably GPDO, advertisements and trees)
- Some planning policy separate since 1960s ; all separate now (PPW and TANs)

Historic Environment (Wales) Bill Deddf yr Amgylchedd Hanesyddol (Cymru)

- Separate exercise being conducted by OLC
- Will replace:
 - Planning (Listed Buildings and Conservation Areas) Act 1990 (other than "consent" provisions)
 - Ancient Monuments etc Act 1979,
 - Historic Buildings and Ancient Monuments Act 1953
 (insofar as they apply in Wales)
- Will also include Historic Environment (Wales) Act 2016

The result Y canlyniad



Wales:

- Planning (Wales) Act 2020
- Historic Environment (Wales) Act 2020
- fewer statutory instruments (including new Use Classes Order and General Permitted Development Order from 2019
- England:
 - 30+ Acts of Parliament
 - numerous statutory instruments

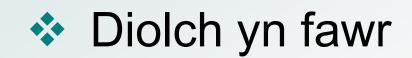
Future changes Newidiadau yn y dyfodol

- Assembly standing orders to encourage future changes to be in the form of changes to the Code
 Rether then freestanding logislation
 - Rather than freestanding legislation
- We shall see …

What next? Beth nesaf?

- Comments on Consultation Paper, please, by 1 March 2018
 - if possible, focussing on impacts (positive or negative)
 - by email to planning_wales@lawcommission.gov.uk
- Final report Summer 2018

... thank you





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