



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

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 extend to England and Wales
 - including Welsh Development Agency Act 1973, and Norfolk and Suffolk Broads Act 1988
- ❖ Some obviously apply 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)

- ❖ Single co-ordinated code, includes
 - 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

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:
 - 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 infrastructure 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

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

13. Listed buildings and conservation areas

Adeiladau rhestredig ac ardaloedd cadwraeth

- ❖ At present, three overlapping systems:
 - 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

13. Listed buildings and conservation areas

Adeiladau rhestredig ac ardaloedd cadwraeth

- ❖ 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

13. Listed buildings and conservation areas

Adeiladau rhestredig ac ardaloedd cadwraeth

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

13. Listed buildings and conservation areas

Adeiladau rhestredig ac ardaloedd cadwraeth

- ❖ 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
 - 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

❖ Diolch yn fawr



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