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e-mail response sent to: LegislativeCounsel@gov.wales

Dear Sir/Madam,

Response to: The future of Welsh law: classification, consolidation and codification

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 25,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

Our response to the consultation questions is set out below.

We recognise the complexity and sometimes confusing structure of the existing legislative framework and in particular the lack of clarity about which Westminster legislation applies in Wales and the consequent difficulties this causes for practitioners and users. We responded to the [Planning Law in Wales](#) consultation in 2018 and we welcome the work taking place on Welsh law, along with the principles of simplification, consolidation and codification of planning law in Wales.

Given the importance of planning in delivering goals in the Welsh Government's Well-being of Future Generations (Wales) Act 2015, and the recognition of planning

as one of the four key levers to deliver “Prosperity for All – the National Strategy”, we believe that each Local Planning Authority (LPA) should have an appropriately qualified (i.e. Chartered) statutory Chief Planning Officer. The role of a Chief Planning Officer for each planning authority should be established in legislation to ensure expertise about place and spatial planning is available at senior management level. This should set out where they would need to be involved in decision-making within and beyond the planning service. It would also establish how and when the Chief Planning Officer would be required to be involved in strategic decision-making. This measure would provide a better planned approach to service delivery and development which will benefit places and people in the longer term and would follow recent practice in Scotland, with the [Planning \(Scotland\) Act 2019](#) setting out provisions to make sure that there is a Chief Planning Officer in every planning authority. This shows Scotland leading the way in ensuring that decisions on development, communities and policy will be made in the long term public interest and we would urge Welsh Government to pursue this as part of the overall review of planning law in Wales.

RTPI Cymru’s response to the consultation questions are set out below. If you require further assistance, please contact RTPI Cymru on 020 7929 8197 or e-mail Roisin Willmott at walespolicy@rtpi.org.uk

Yours sincerely,



Dr Roisin Willmott OBE FRTPi
Director
RTPI Cymru

Question 1: With reference to the draft taxonomy in Annex 1, do you agree with the suggested structure of subjects and sub-topics?

The consultation document states that the proposals set out in this consultation are an indicative division of legislation and needs further consideration, including more detailed scoping and analysis of the existing law, over the next 18 months. We strongly support the idea to give the proposal further consideration and scoping. RTPI Cymru would be happy to be involved in any meetings, workshops or discussion groups and we look forward to developing our position over the coming months. Our early thoughts in relation to codes and categories are set out below:

We have previously raised concerns in our response to the Planning Law in Wales (2018) consultation, relating to the separating out of the rural and historic environment legislation, from planning. Our concern largely relates to ensuring that the separation does not undermine the application of core planning law, across urban and rural contexts for example; with the rural/historic legislation divorced from planning. We note that the principle of having a planning code is that it incorporates all the legislation relating to planning, so to have separate rural/historic environment codes implies that

these are separate from planning. The following extracts show the interlinked relationship between heritage and planning law.

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that: "In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area." Subsection (2) then clarifies that the provisions referred to in subsection (1) include "the planning Acts" and, in the Planning and Compensation Act 1990, "the planning Acts" are defined as this Act (the 1990 P&C Act), the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990.

In considering the subject categories, the consultation document states, "We recognise there are fine judgements about where boundaries should lie". The idea of such boundaries in areas where there are multiple interests does not initially appear helpful. In practice, in both developing legislation and in operating and having access to the legislation, the connections between planning and the rural/historic environments would ideally be unobstructed by classifications. The subject 'category', in this case, would need to cover all planning related law. We believe that users would expect this from a code.

In saying this, we also recognise the difficulties in organising the law and while it would be preferable to have all legislation potentially related to planning under the planning code, we recognise that, although of direct relevance to planning, many, if not all, of the environmental, historic environment, transport etc. legislation fulfils other functions beyond planning and it could be argued that numerous pieces of legislation could fall under multiple codes. If the proposals as set out at Annex A and B of the consultation document were to go ahead then, there would need to be clear interactions and cross-overs between codes/topics.

This in turn leads on to the wider issue of what should go into primary and secondary legislation in relation to the balance between durability, longevity and stability of the legislation on the one hand, and flexibility on the other. We question which is better for preserving the advantages of consolidation? Promoting stability over time may mean focusing on a more skeletal Act that is more able to endure political change? Primary legislation would be more enabling and concerned with matters of principle and that much of the detail would therefore be devolved down to secondary legislation. While it is difficult to stop the process of political change, the consolidation into the code should make it easy to identify and navigate the area of law or guidance of interest and give confidence that the content is complete and current. However, there also needs to be the ability to track changes to be clear about what has been changed, when and why.

Question 2: Do you have any suggestions for improving this draft taxonomy?

See above initial thoughts.

Question 3: What specific area or areas of devolved law do you think are most in need of consolidation, and why?

See above for RTPI Cymru's initial thoughts on the context and classification of the law in Wales.

Paragraph 79 of the consultation document states, "a major project to consolidate planning law on the back of the Law Commission's report is underway. We are also working to consolidate the law on the historic environment. The Welsh Government will publish more information about these projects in due course." It is not clear whether the consolidation of planning law is proceeding in advance or as part of the new programme, which will be consulted on from 2021 onwards, however, we support the prioritisation of work on planning law and look forward to more information on this in due course.

Question 4: Do you agree with the Welsh Government's vision and proposed approach for codification of Welsh law?

The option of remaking a statutory instrument in its entirety when amending it seems sensible, avoiding having to piece together multiple statutory instruments to work out what the legislation says and potentially missing something.

The issue of resources to carry out a codification programme, maintain and publish this effectively thereafter is a matter that concerns us. Even effectively resourced, this could be a long process. Timescale, resources, commitments to delivery etc are all important elements in the success of this project.

Question 5: What activities could the Welsh Government undertake or support that would help you or others to better understand Welsh law?

The consultation document discusses issues around the scarcity of publications on Welsh law and proposes developing explanatory content collaboratively in the future. RTPI Cymru would be happy to assist should this opportunity arise.

In discussing this consultation and considering codes, categories and boundaries, we felt it would be useful to have some idea of how stakeholders would access the law in the future, how it would look (online etc.) and interlink across any boundaries. We note the consultation document refers to a new database of legislation, with the working title of Cymrux. Practical information on this and accessing the law would be extremely useful at the outset to help us form positions around codes and topics.

Question 6: We would like to know your views on the effects that the classification, consolidation and codification of Welsh law would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment

Question 7: Please also explain how you believe the classification, consolidation and codification of Welsh law could be formulated or changed so as to have:

- positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment

Question 8: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No comment