Chapter 4: General responses to the Consultation Paper

INTRODUCTION

4.1 As explained in the previous Chapter, we received responses to the Consultation Paper from a wide range of individuals and groups. The great majority of the responses related to the specific questions we asked in Part Two of the Paper; these have been incorporated in the topic chapters in Part Two of this Report. However, some consultees made some general points, relating to the codification exercise as a whole. We summarise those points in this Chapter.

VALUE OF CODIFICATION

4.2 A number of consultees commented on the benefits of codification. Given the volume of comments on this point, we divide responses broadly into public authorities, professional bodies, private sector bodies and their advisers, third sector organisations, and individual consultees (recognising that some consultees may not fit easily into one particular category).

Public authorities

4.3 There was overwhelming support for the codification exercise from the Planning Inspectorate (PINS) and from planning authorities.

4.4 PINS noted that it was “generally supportive of the suggested proposals”, and that “the Law Commission has set out many worthwhile and reasonable improvements to current planning legislation.”

4.5 Most authorities supported codification in principle. Pembrokeshire Coast National Parks Authority, National Parks Wales, and Carmarthenshire CC all suggested that the Consultation Paper “presents an overwhelming case for the creation of a new Planning Code for Wales”. Newport City Council noted that “there is masses of legislation relevant to Wales and it would be helpful [to have] a consolidated Code”.

4.6 The North and Mid Wales Association of Local Councils said that “the Association supports the introduction of a Planning Bill which consolidates all the others.” Presteigne and Norton Town Council described codification as “very sensible and … very helpful to the lay person.” Llandysilio Community Council and Llandrinio & Arddleen Community Council said that they “appreciate the overarching importance of tidying up and bringing together existing planning law”. Cynwyl Elfed Community Council was more cautious, noting that:

Generally there is a need to order the current legislation, to clean and eliminate legislation which is never used. But, care should be taken to keep the important legislation.
4.7 We agree, and we are grateful to consultees who flagged specific provisions that might be worth retaining.

4.8 The Welsh Language Commissioner also supported codification in principle:

I also support the intention to try and simplify and reinforce planning law as it is relevant in Wales and to produce a new Planning Bill and Planning Code. Such a move would also provide an opportunity to ensure that a large piece of legislation which affects Wales is available through the medium of Welsh.

**Professional bodies**

4.9 The relevant professional bodies generally supported codification in principle. The Royal Town Planning Institute (“RTPI”) Cymru said that it supported “a fully bilingual statute applicable to the planning system in Wales... There is a need to ensure that practitioners can easily access and identify the laws applying in each country.” The Chartered Institute of Building commented that “the CIOB welcomes steps taken to simplify planning law.” The UK Environmental Law Association stated that “the central themes of consolidation and clarification rather than attempting significant amendments of the substantive law are to be welcomed”.

4.10 Likewise, the Bar Council stated that it “supports the Law Commission’s objectives in proposing reforms to planning legislation in Wales through a consolidation and simplification of the current legislation”. It added that:

We agree that such an approach would make the planning system in Wales far more accessible to the public as well as to those more used to dealing with the planning system, would help avoid inconsistent decisions being made, and would bring about greater fairness overall. For this reason, we agree with the majority of the proposals in the consultation paper.

**Private sector bodies**

4.11 Many of our consultees were from landowners and developers. These generally supported planning law consolidation. National Grid stated that:

The suggestion seems intended to provide useful foundations to the broader revisions to the planning system in Wales. There is a logic to the structure proposed, the revisions seem likely to work well, and should help to achieve the stated aims. … The proposed rationalisation of the planning system within Wales will, we believe, have the long-term effect of simplifying the operation of planning policy and development control in Wales. This is a useful change to offset some of the additional costs that may come from an increasingly divergent planning system in England and Wales.

4.12 Innogy Renewables UK, a major energy developer and operator in the UK, was very supportive of planning law codification:

We welcome many of the recommendations included in the Law Commission’s consultation which should address the complex and often confusing structure of the existing legislative framework in Wales. We
therefore support the work of the Law Commission, along with the principles of simplification, consolidation and codification of planning law in Wales.

4.13 Tidal Lagoon Power, a Welsh developer associated with large energy projects, made similar comments.

4.14 Some stakeholders highlighted the importance of not changing the law for the sake of change when it was working well. The Home Builders Federation stated that:

The HBF are supportive of the general principle of codification and note that this second consultation has considered far wider issues than original envisaged. We do however have some concerns that some of the areas of proposed change are ones which the industry does not have issues or problems with so question the need for change.

4.15 This sentiment was echoed by Redrow Homes, who noted that:

Redrow supports the principle of a new Planning Code to consolidate existing planning legislation. This includes the removal of legislation that has never been used or not been applicable for many years. … However, change for the sake of change should not be made.

4.16 We have taken these concerns on board. While the overall aim of our project is to simplify and consolidate the law, where the existing law is widely accepted and understood in its current form we are in favour of an approach that could be described as “if it isn’t broken, don’t fix it”. We are grateful to the many consultees who have emphasised this point in respect of several of our provisional proposals.

4.17 The Mineral Products Association took a less positive view of codification overall:

We applaud the recognition of the need to review the system and feel this is long overdue. However, whilst planning law is undoubtedly overly complex, we do not feel that the measures proposed in the consultation will improve the effectiveness and efficiency of the system.

4.18 This concern appears to relate to the scope of the codification exercise, in particular the lack of detailed proposals for reform of the law relating to minerals. We discuss the scope of codification in more detail below.

4.19 We also heard from a number of professional firms, advising landowners, developers and public authorities. Arup, an independent firm of designers, planners, engineers and consultants, stated that “rationalising the excessive amount of planning legislation in Wales is a significant step towards streamlining the existing planning system and will ultimately benefit all stakeholders involved.” Elfed Williams of ERW Consulting was similarly positive.

4.20 Douglas Hughes Architects Ltd provided a useful insight into the effect planning law consolidation could have on a medium-sized firm:

We broadly welcome simplification of primary legislation related to land use and development and believe that by doing so it will save unnecessary time,
work and expense both for our clients and ourselves. We usually manage the whole process [for our clients], from undertaking surveys and sketch schemes through to completion of works on site. The area that proves most problematic for us to manage is … obtaining planning permission. … Simplifying the planning process and providing our clients with more certainty would therefore be most beneficial and welcome.

Third sector organisations

4.21 There was widespread support for planning law codification from the third sector (charities and voluntary organisations). The National Trust “welcomes the work of the Law Commission and the principles of simplification, consolidation and codification of planning law in Wales” and “welcomes the potential benefits of greater engagement and involvement in the planning system with simplification and codification”. The Theatres Trust was “supportive of the stated intention to simplify and consolidate planning law in Wales”. The Royal Society for the Protection of Birds stated that “we welcome your consultation and fully support the progressive move towards a comprehensive but simpler planning code in Wales.” Planning Aid Wales was also positive about codification:

As an organisation that seeks to improve understanding of, and accessibility to, planning processes, PAW strongly supports the proposals to clarify and simplify statutory planning provisions.

4.22 The Churches’ Legislation Advisory Service (“CLAS”) and Cytûn (Churches Together in Wales) were less positive about the need for planning law codification:

Neither CLAS nor Cytûn, nor our member Churches, takes a view on the principle of codification and consolidation of planning law in Wales. However, in giving evidence to the Culture, Welsh Language and Communication Committee of the National Assembly for Wales on 22 November 2017, Cytûn and two of its member Churches indicated that they are not hampered by the current lack of such consolidation and would not perceive it to be a legislative priority.

4.23 We make few recommendations in respect of planning law that specifically affect churches and church land,¹ and so we expect the effect of codification on Welsh churches to be minimal.

Individual respondents

4.24 A number of individual stakeholders commented on the difference codification would make to their work. Allan Archer, an independent planning consultant, highlighted some of the issues with the current system from a practitioner’s perspective:

There are many aspects of the Commission’s analysis and general conclusions about the problems with the legislation as it currently exists with which I agree – the complexity and confusing structure of the existing legislative framework and the lack of clarity about which Westminster legislation applies in Wales with the consequent difficulties this causes for

¹ See para 18.110.
practitioners and users. I regularly find it very frustrating not to be able to access primary and secondary legislation in consolidated form and time consuming to have to laboriously create consolidated text from the original statute and subsequent amendments. I find it is not possible to rely confidently on general legal reference books, which often ignore differences between England and Wales, or the Government’s www.legislation.gov.uk website which is often not completely up-to-date.

4.25 Andrew Ferguson, a senior planning officer writing in a personal capacity, stated that:

In general, I wholeheartedly support the intention to simplify, consolidate and modernise planning law in Wales as the current legislation is not user friendly in the slightest. Having the legislation in one place, as one resource, would be invaluable to planning practitioners and all users of the system. At the present time, it is very difficult to find out what is applicable in Wales at any time, often involving cross-referencing with several other statutory instruments, and even when you do find what you’re looking for, you’re not entirely sure that it everything has been enacted in Wales and you query whether you’ve missed something along the route.

4.26 Janet Finch-Saunders, AM commented that:

Clearer, more accessible guidance for applicants, objectors and all relevant parties must be an utmost priority as regards planning law. As noted in the consultation, there are more than 25 Acts of Parliament and the Assembly covering planning law, making it often complex to navigate for many.

**Conclusion: codification in principle**

4.27 Almost every consultee who responded to our Consultation Paper supported codification of Welsh planning law in principle. There was overwhelming support for simplification and consolidation of the current planning law system as an exercise across a variety of different sectors and across many different interest groups.

**SCOPE OF THE CODIFICATION EXERCISE**

4.28 If codification is desirable in the context of Welsh planning law, the first inevitable question is what aspects of Welsh planning law should be codified. In our Consultation Paper, we noted five areas of planning law that could usefully be codified into a single, consolidated planning Code:

1) development planning and development management;

2) the historic environment;

3) the rural environment;

4) regeneration and development; and
5) hazardous substances.  

4.29 In our Scoping Paper, we originally recommended that these areas should be approached in five phases. However, we revised this position in our Consultation Paper, noting that there was a balance to be drawn between 1) the resources required of a small number of large codification phases and 2) the uncertainty and potential complexity arising from a large number of smaller codification phases. Following helpful consultee responses, we therefore recommended approaching planning law codification in three phases:

1) development planning, development management and regeneration; including listed buildings, conservation areas and trees (the subject of this Report);

2) the historic environment (now the subject of a separate, contemporaneous Welsh Government exercise); and

3) the rural environment, and hazardous substances (areas suitable for a future codification exercise).

4.30 We asked consultees for general comments on this approach. We received few. National Grid said that:

The five themes set out in the consultation documentation are supported, and have provided a good framework for the work which has followed. The inclusion of such topics as listed buildings, conservation areas, and protected trees within the Code has a logic to it.

4.31 We did, however, receive a number of specific comments in relation to areas outside our intended scope. The largest number of comments were made in relation to legislation governing the countryside and rights of way (which we called “the rural environment”), and in particular its relation to the new Planning Code.

**Countryside and rights of way: possible inclusion in the present codification**

4.32 In general, there was scepticism among consultees regarding the separation of the rural environment from development planning, development management, and regeneration. We had suggested that legislation relating to the countryside and rights of way could perhaps be codified in a separate Code, given the modest overlap between rural environment legislation and planning law. However, few consultees accepted this argument. RTPI Cymru stated that:

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2 Consultation Paper, para 3.1.
3 Scoping Paper, para 4.8.
4 Consultation Paper, para 3.5.
5 Consultation Paper, paras 3.9 to 3.17.
6 Consultation Paper, paras 3.87 to 3.100.
7 Consultation Paper, paras 3.6 to 3.8.
8 Consultation Paper, para 3.104.
We raise strong concerns at the proposal at paragraph 3.7 relating to the separation out of ‘the rural environment’… It may be appropriate to have additional elements of the Code which are only relevant to rural areas, but this needs explanation.

4.33 The National Trust noted that it was “concerned about the inclusion and separation of “the rural environment” and asked if “the existence of a separate Rural Environment Code [would] separate rural issues from planning?”

4.34 Allan Archer commented that:

I have some concern about the possible splitting away of rural planning from urban planning if the proposed Planning Code was to be separated from the Countryside and Rights of Way Code, because of their inter-related nature.

4.35 Huw Evans (Geldards LLP) argued that:

Reference to a code for the Rural Environment needs clarity. There are very distinctive issues relating to the rural environment but how these are dealt with through the development plan and in day to day decision making may well be a matter for WG policy and technical advice.

4.36 It is clear from these comments that we did not make our intention clear. We had no intention of suggesting that the application of the normal planning process in rural areas should in some way be separate from its application in suburban and urban areas.

4.37 What we had in mind was that there exists a substantial body of primary legislation relating to the protection of the countryside, public access to private land, and pedestrian rights of way, largely to be found in the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Wildlife and Countryside Act 1981, the Countryside and Rights of Way 2000, and the Natural Environment and Rural Communities Act 2006. Related provisions are to be found in the Highways Act 1980 and (in relation to England only) the Deregulation Act 2015.

4.38 These various statutory provisions might well be appropriate for codification insofar as they apply in Wales. And that code could be freestanding, as a Countryside and Rights of Way (Wales) Code, or it could form a further part of the Planning Code – although the former approach would seem to be preferable, given the relatively modest overlap between the two. However, in either case, they would need to be the subject of considerable further thought. And if the Welsh Government is contemplating further legislation relating to environmental matters, it would be sensible for such codification to follow the conclusion of that exercise.

4.39 Much of this law also links in with the legislation relating to protecting wildlife, which was the subject of a recent Law Commission review. The law is in turn strongly influenced by EU Directives relating to the protection of species and habitats, which are likely to be the subject of further review in the light of the impending departure of the UK from the European Union. It also clearly relates to the general law on

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biodiversity and related topics, which was recently the subject of the Environment (Wales) Act 2016. And the powers and duties of Natural Resources Wales, set up under the Public Bodies Act 2011, and elaborated in the Functions Order 201310 will be relevant.

4.40 But we continue to be of the view that this should be the subject a separate codification exercise, of comparable scale to the present exercise relating to planning legislation. The timing of that exercise will no doubt depend on the availability of resources.

Countryside and rights of way: detailed points

4.41 Some consultees expressed a desire to include issues relating to the rural environment in the first phase of codification. The Home Builders Federation suggested that, in relation to the first phase of codification:

Some additional areas could be looked at that could help speed up the development process. For example, those matters where we need planning before we deal with other issues, such as Public Right of Way diversions or dealing with Natural Resources Wales (NRW) licences. Why could these not be dealt with at the same time as the planning application, something which is being looked at in England?

4.42 Redrow Homes made a similar suggestion.

4.43 The Open Spaces Society also questioned the exclusion of certain rural environment provisions from our Consultation Paper:

The consultation does not make any reference to Part 8 of Planning (Wales) Act, which alters the existing town and village green (WG) legislation by amending the Commons Act 2006.

4.44 The Open Spaces Society went on to make specific recommendations in respect of public rights of way and common land, to encourage the retention of existing commons, greens and rights of way, and to facilitate the creation of new ones. We consider that these are in essence policy issues, rather than technical reforms to the legislation.

Minerals

4.45 The Mineral Products Association stated that “we are somewhat concerned that the scope of the review may have been overly restrictive and those consulted on the scope somewhat limited.” The Association’s main point of concern, which was confirmed in our meeting after the end of the consultation period, was that wider reform of the planning system, particularly in relation to minerals, was not considered at either the scoping phase or subsequently.

10 Natural Resources Body for Wales (Functions) Order 2013, SI 755.
4.46 We accept that there may well be a need for more widespread reform of the way in which the planning system applies to minerals development; however, such reforms are likely to be outside the scope of a technical law reform exercise.

Hazardous substances

4.47 Allan Archer questioned why we did not include the law relating to hazardous substances in the present exercise, given that it is a relatively self-contained area.

4.48 However, we noted in the Consultation Paper that the Health and Safety Executive had commented that for hazardous substance consent to be outside the scope of the code would not present any problems for them. We also observed that the legislation, which was consolidated in 1990 as a separate statute (the Planning (Hazardous Substances) Act 1990) seems to be operating broadly satisfactorily; and there seems to be no particular need to change it at present.

PRACTICALITIES OF THE PLANNING CODE

The nature of a Code

4.49 We received a number of general responses from consultees questioning what was meant by the term “Planning Code”. The National Trust requested “clarification of what constitutes a Code.” Huw Evans stated that “greater clarity as to what is meant by a ‘Code’ would be helpful.” The RTPI similarly sought “further clarification of the meaning of consolidation and codification of planning law”, and questioned how widely the term “Code” was understood in this context. Newtown and Llanllwchaiarn Town Council stated that

The use of the word ‘Code’ is somewhat confusing. This is often used to describe de facto and recommended practice rather than law. It would appear that what is actually being put forward is a planning law framework comprising law, secondary legislation and guidance notes.

4.50 The Bar Council suggested that:

…the term “Code” is defined within the provisions. Whilst it is accepted that the term is familiar to planning practitioners as a collective description in Compulsory Purchase legislation and case law, it is not yet well established in the Law of England and Wales and requires some definitional precision, particularly in respect of the interaction between primary legislation, secondary legislation and (national) planning policy.

4.51 This problem may be overcome by a clear definition of the term “Code”.

4.52 We initially suggested, in our report on the Form and Accessibility of the Law Applicable in Wales, that a Code should incorporate all of the primary legislation on a particular topic, and should then be the subject of a discipline by which all amendments or new legislation would be in the form of amendments to the Code rather than new freestanding pieces of legislation.
4.53 The Welsh Government has taken the view that a Code should include all primary legislation, secondary legislation and Government guidance on a particular topic.

4.54 In its response to our Consultation Paper, Ceredigion CC expressed “reservations about the practicability of including policy and advice/guidance in a Code”. But Pembrokeshire Coast National Parks Authority, National Parks Wales, and Carmarthenshire CC all expressed support for “creation of a comprehensive Planning Code of the primary planning legislation as a first priority (as part of the Welsh Government's initial codification programme)” and “support for publication of policy and guidance / advice documents in codified form.” Allan Archer was also cautiously supportive:

I also support the creation and publication of policy and guidance/advice documents in codified form, although I have reservations about the practicability of including all policy and advice/guidance in a Code, although I would be less concerned if it was limited to the WG’s policy documents PPW and TANs.

4.55 On that understanding of the term, this Report focusses on the piece of primary legislation that would form the principal element in such a Code. For simplicity, we refer to this simply as “the Bill”. But we are aware that the Bill will be used alongside the relevant secondary legislation and guidance – whether they all form part of a Code or are considered as separate items.

Contents and presentation of the Code

4.56 There was some scepticism among consultees about whether a Planning Code containing primary legislation, secondary legislation and guidance would continue to maintain a clear legal distinction and order of precedence between its separate elements. Pembrokeshire Coast National Parks Authority, National Parks Wales, and Carmarthenshire CC all expressed support for the “maintenance of a clear distinction between primary and secondary legislation.” Allan Archer noted that “it is important to maintain a clear distinction between primary and secondary legislation and between legislation and policy and guidance”, in particular “a clear understanding of the question of precedence – there is an obvious scope for misunderstanding without this clarity.”

4.57 Huw Evans also noted that:

There needs to be a distinction between primary and secondary legislation and clarity on the role and weight to be given to Orders, Regulations, Circulars, Case law, Ministerial Statements together with Welsh Government policy, advice and guidance.

4.58 We agree that, without clear explanations and signposting, a Planning Code comprising primary legislation, secondary legislation and guidance is liable to confuse. The distinction between primary and secondary legislation is largely a matter of convenience, with broad principles in the Act and details in regulations. But every piece of legislation, whether primary or secondary, is binding on all. Guidance, on the other hand, is merely persuasive – however much some users may treat it as though it binds others.
4.59 However, this appears to be largely a matter of presentation. If the distinction between the three types of provision within the Code is highlighted from the outset and throughout the Code, the likelihood of misunderstanding will be significantly reduced.

4.60 The structure of the Code may also assist in making planning law in Wales more navigable. The RTPI noted that:

> Thought needs to be given to how a Code is published, to ensure that it is easy to access and identify a topic of interest. Even a large code should be able to be made intelligible and easily accessible.

4.61 We are in complete agreement with this view in principle. But it remains to be seen how the gradual introduction of new technology into the production of legislation (including, for example, hyperlinks) can best be used to assist the lay reader.

4.62 Finally, Monmouth Town Council made an important point in respect of the language used in the Code:

> The committee feels that it would be very helpful to everyone if the language used was in plain English and used less technical terms. The reading of such documents that is full of technical jargon is off putting.

4.63 Here too, we agree in principle, although the need for precision will always result in legislation that is not as readable as a novel.

**Resources required to maintain the Code**

4.64 Many consultees expressed concern that the creation and maintenance of a comprehensive Planning Code would require significant Welsh Government resources. POSW, North Wales Development Managers’ Group, Monmouthshire CC, Ceredigion CC, Pembrokeshire CC, Carmarthenshire CC, Pembrokeshire Coast National Parks Authority, and Neath Port Talbot CBC all suggested that “the issue of resources to carry out a codification programme and maintain and publish Codes effectively thereafter is a serious issue” and noted that “even effectively resourced, this could be a long process”. The National Trust noted that “codification will be a very challenging and complex process. To be successful, the project requires sufficient funding and a specific delivery timescale”.

4.65 The RPTI noted that “timescale, resources, commitments to delivery etc are all important elements in the success of this project”. The Bar Council made a similar point:

> We reiterate that it is self-evident in the Bar Council’s view that the aims behind a wholesale re-drafting or rather re-configuration of planning related legislation in Wales will require significant political will and support for the project accompanied by a recognition that the process is most likely to take a considerable period of time. The envisaged benefits therefore from this proposal will also have to await. The alternative of more piecemeal reform may necessarily be more attractive.
4.66 Overall, it appears that many consultees were sceptical about whether the funding and political will required to undertake such a large project would be forthcoming over the sustained time period necessary to achieve it. However, no consultees suggested that for this reason the project should not be attempted.

**Updating the Code**

4.67 Many consultees expressed the view that the Code should be updated regularly and accurately, and that an effective mechanism must be put in place to ensure that this happened. Allan Archer noted that:

> It is one thing to create a Code but it requires a continuing commitment to maintain and update it and to create effective arrangements affording free and easy access for all to up-to-date bilingual versions of all primary and secondary legislation, policy and guidance/advice. Even well resourced, considering the correspondence with WG after your earlier report, it seems that this could be a long process with the possibility of it being postponed or slowed down if there is an over-riding need to introduce replacement ‘European’ legislation.

4.68 Several authorities expressed similar views. Neath Port Talbot CBC stated “this codification exercise should be able to withstand the test of time and as far as possible it should be updated as one document every time the legislation is changed or added to” and that “the importance of this cannot be over emphasised.” Ceredigion CC sought assurance from the Welsh Government that “once codified, there would be a continuing commitment to further changes being incorporated into the code.” Huw Evans noted that “the manner in which the Code is monitored and reviewed is crucial. Guidance needs to be given as to how the Code is to be revised and assurance that there are adequate resources to maintain it.”

4.69 Several consultees also stated that the Code should be available via the Welsh Government Website, should be presented in a similar format to Planning Policy Wales, and should be updated in a similar way.

4.70 Some consultees had more specific suggestions regarding how the Code should be updated. Andrew Ferguson noted that:

> If there is to be a specific Code website, it would be extremely useful to have a link to any enacting legislation, and for this to be updated regularly. If not, it must be absolutely clear (or easy to ascertain) about what provisions are in force and when they were enacted, otherwise it will result in the same confusion as exists currently.

4.71 The Public Service Ombudsman for Wales made a related point in respect of older versions of the Code:

> It is important during our investigations to be able to identify what the law was at any given point in time (that is, what the law was when the problem we are investigating occurred). Therefore, it will be important to have an archive where previous ‘editions’ of the Code can be easily found.
4.72 This can in principle be done – existing commercial websites contain earlier versions of statutory material that has since been amended or repealed, so the technology clearly exists. And the historical material available on legislation.gov.uk is constantly improving. But the creation and maintenance of such an archive will need significant additional resources in addition to those required merely to update the Code.

OTHER GENERAL COMMENTS

4.73 We note here some of the other general comments we received from consultees, and specific suggestions for law reform that do not fit easily into the later chapters.

The planning system as a barrier to smaller developers

4.74 The Chartered Institute of Building argued that “at present the planning system does not work in proportion to the size of the project” and “can act as a barrier to smaller developers being able to compete” with larger developers. We consider that this suggestion is a matter for planning policy rather than planning law.

Changes to environmental legislation and Aarhus Convention obligations

4.75 Friends of the Earth Cymru highlighted Article 1 of the Aarhus Convention, which states that

in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

4.76 It therefore argued that in considering the simplification of the planning system in Wales, each provision that is discarded or simplified

…must follow the Aarhus test – is there an opportunity for the public to find out what is happening in a timely way and respond? Planning should not simply be a series of negotiations between a developer and planning officer. This is particularly important in the light of the principles of collaboration and involvement enshrined in the WFG Act 2015.

4.77 We have taken on board this point, and we have considered the Aarhus Convention in respect of our recommendations that affect environmental legislation or may have an environmental impact.

Requirement for a planning authority to take positive action when dealing with planning applications

4.78 CMet Residents Action Group, a group of Cardiff residents opposing Cardiff Metropolitan University’s planning application to build a new hall of residence, stated that:
We welcome the Commission’s point contained in paragraph 3.66 [of the Consultation Paper], which emphasises that a planning authority should be proactive in dealing with applications rather than reactionary.

4.79 However, in that section of our Consultation Paper, we were talking about the proactive role of a planning authority in promoting regeneration and renewal, rather than in dealing with planning applications.

Focus on Development Management

4.80 Barratt & David Wilson Homes South Wales, a property developer, stated that:

We would suggest that significant changes to the development management procedure should be subject to a separate planning consultation. It is possible that many stakeholders may not be aware of the full extent of the proposals and therefore the key changes to the development management procedure (i.e. the abolishment of the outline planning application process) should be advertised independently.

4.81 As it happens, many were aware of our proposals, and advised us accordingly. In respect of the abolition of outline planning permission, we have amended our proposal on the basis of these comments.11

LEGISLATIVE COMPETENCE

4.82 Finally, we should for completeness note that, both in this Chapter and throughout those that follow, we have assumed that the Welsh Ministers will be in a position to take forward some or all of our recommendations, as they consider appropriate, but clearly their ability to do so will be governed by the extent of the legislative competence of the National Assembly.

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11 See Recommendation 8-1.