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Chair, Law Commission for England & Wales
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Note: the numbers 1-15 shown in red have been added by the Welsh Government. They are used in the Drafters' Notes for the Planning (Wales) Bill to refer to the recommendations in this letter.

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Dear First Minister,

I write, following discussions with your officials, to set out the Law Commission's recommendations as to whether certain changes to the law would be appropriate for inclusion in the proposed consolidation of planning legislation for Wales.

I am pleased to be able to confirm, on behalf of the Commission, that the following 15 matters are, in our view, appropriate for inclusion in a consolidation Bill, under Standing Order 26C.2(v).

1 Call-in of planning applications by Welsh Ministers (duty to notify applicant)

This proposes to amend the procedure, currently in section 74 of the Town and Country Planning Act 1990 ("the TCPA"), applicable where the Welsh Ministers call-in an application for their decision, so as to require them, rather than the planning authority, to notify an applicant for planning permission when this occurs.. This would be a minor improvement to procedure to ensure that it works better in practice. It was not dealt with in our report on *Planning Law in Wales* ("the PLW report")¹ and was therefore not the subject of consultation. However, it raises no point of principle. Further, whilst the decision as to whether a matter is controversial is for the Senedd, not for the Commission, it seems to us unlikely that this would be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

¹ *Planning Law in Wales: Final Report* Law Com No 383.

2 Appeals and inquiries (power to appoint assessors)

This proposes to extend to inspectors the power (currently available only to the Welsh Ministers, under paragraph 6 of Schedule 6 to the TCPA) to appoint assessors at hearings and inquiries and in relation to matters dealt with by written representations. This would be a minor improvement to procedure to ensure that it works better in practice. It was the subject of recommendation 11-3 of the PLW report after public consultation. It raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a Consolidation Bill under Standing Order 26C.2(v).

3 Purchase notices (power to serve a notice on joint planning board)

This proposes to amend the provisions as to purchase notices in section 137 of the TCPA, so as to enable a notice to be served on a joint planning board where it is the planning authority. This appears to have been no more than an oversight. It was not dealt with in the PLW Report and was therefore not the subject of consultation. However, it raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

4 Enforcement warning notices (effect on subsequent enforcement action)

This proposes to adjust the provisions as to enforcement warning notices in sections 173ZA of the TCPA, to avoid the possibility of authorities using them to postpone the time in which to take enforcement action. This would be beneficial and would remove an anomaly. It was the subject of recommendation 12-4 of the PLW Report after public consultation. The proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

5 Enforcement: assurances as to non-liability to prosecution

This proposes to remove a procedural anomaly by amending section 172A of the TCPA to enable an authority to issue to subsequent owners an assurance as to liability to prosecution for non-compliance with an enforcement notice. It was the subject of recommendation 12-22 of the PLW Report after public consultation. The proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

6 Compensation payable for withdrawal of stop notice (duty to pay)

This proposes to impose on the Welsh Ministers, rather than (as at present) the planning authority, the duty to pay compensation under section 186 of the TCPA were they to have issued both an enforcement notice and a stop notice, and then withdraw the stop notice. It was the subject of recommendation 12-20 of the PLW Report after public consultation. This would align the statutory provisions with non-statutory practice. The proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

7 Offences of supplying false information (penalty on conviction)

This proposes that the maximum penalty on conviction for an offence of supplying false or misleading information in relation to planning matters under sections 194 and section 330 of the TCPA – which is currently an unlimited fine or imprisonment for up to two years – should be changed to simply an unlimited fine. It was the subject of Recommendation 12-24 of the PLW Report after public consultation. The proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

8 Offence of supplying false information to obtain a certificate of lawfulness (application to appeals)

This proposes to apply to appeals under section 195 of the TCPA the offence of supplying false or misleading information. That offence was the subject of Recommendation 12-24 of the PLW Report, but not in the context of appeals. It was therefore not the subject of consultation specifically. However, the proposed change would rectify what appears to have been an inadvertent omission and would only extend criminal liability in very limited circumstances. It raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

9 Tree replacement notices (power to waive or relax)

This proposes the introduction of an explicit power to waive or relax a tree replacement notice issued under section 213 of the TCPA. This would bring such notices into line with enforcement notices, in relation to which there is a similar power under section 173A. This was the subject of Recommendation 15-12 of the PLW Report after public consultation. The proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

10 Maintenance of land notice (time limit for service)

This proposes to amend the procedure for issuing and serving a maintenance of land notice, currently under section 215 of the TCPA, so as to require a copy of the notice to be served on those affected within 28 days of the notice being issued. The need for this arises out of the proposal in Recommendation 13-2 of the PLW Report that notices should be issued rather than served, but this specific point was not dealt with, and was therefore not the subject of consultation specifically. However, it would be a minor improvement to procedure to ensure that it works better in practice; it raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

11 Tree replacement notices (procedure and time limit for service)

This proposes to amend the procedure for issuing and serving a tree replacement notice, currently under section 213 of the TCPA, so as to require a notice to be issued, and a copy to be served on those affected within 28 days. The proposal that such a notice should be issued rather than served is in line with Recommendation 13-2 of the PLW Report, which made the same proposal in relation to maintenance of land notices. The need for service to be within 28 days of the notice being issued arises out of that recommendation. These points were not dealt with in the PLW Report and were thus not the subject of consultation specifically; but they were analogous to the point that was dealt with there. This proposal would result in a minor improvement to procedure to ensure that it works better in practice; it raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

12 Maintenance of land notices and tree replacement notices (giving notice of rights of appeal)

This proposes to introduce a power for regulations as to maintenance of land and tree replacement notices to require that notices should be accompanied by a statement as to the recipient's right to appeal against them. In relation to land notices, this was the subject of Recommendation 17-3 of the PLW Report after public consultation. The identical issue in relation to tree replacement notices was not dealt with in the PLW Report, and therefore this was not consulted upon. The force of our recommendation applies to tree replacement notices, and this proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

13 Maintenance of land notice (variation of terms of notice on an appeal)

This proposes to amend section 217 of the TCPA so as to allow the Welsh Ministers or inspectors to vary a notice at any point in the proceedings, provided that the variation does not cause any injustice. This was not dealt with in the PLW Report. Because it had been the subject of this earlier consultation, this proposal was the subject of a short consultation with key stakeholders as part of the exercise of our considering the consolidation issue. That having yielded no objection, our view is that the proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

14 Revocation of suspension order in relation to minerals sites (notifying those affected)

This proposes to amend Schedule 9 to the TCPA so as to require the planning authority to notify those affected where it decides to revoke a suspension order relating to a minerals site. This was not dealt with in the PLW Report. However, despite not having been the subject of consultation, the proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

15 General power to contribute towards expenditure (provisions to which it is applicable)

This proposes to amend section 306 of the TCPA so as to widen the power of a local authority or a statutory undertaker to contribute towards the expenses of a planning authority in carrying out any of its functions under the TCPA, rather than only those functions listed in section 306(2). Given that this refers only to a power to make contributions, rather than a duty to do so, the proposal is a limited one. However, because it was not dealt with in the PLW Report, and was therefore not the subject of prior consultation, this proposal too was the subject of further consultation with key stakeholders. That having yielded no objection, our view is that the proposal raises no point of principle and seems unlikely to us to be controversial. It would accordingly be an appropriate change to make in a consolidation Bill under Standing Order 26C.2(v).

I would like to take this opportunity, at an early stage in my tenure as Chair of the Commission, to echo the congratulations of my predecessor to the Welsh Government on its continuing efforts to making the law of Wales accessible, in line with the recommendations of our earlier report on *The Form and Accessibility of the Law Applicable in Wales*. I am pleased that this major Bill is a significant milestone on that path.

Yours sincerely,

A handwritten signature in black ink that reads "Peter D Fraser". Below the signature is a long, thin horizontal line that starts under the first letter and extends to the right, ending under the last letter.

Lord Justice Fraser

Chair, Law Commission