

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol / The External  
Affairs and Additional Legislation Committee  
Bil y Diddymu Mawr / The Great Repeal Bill  
EAAL(5) GRB 07  
Ymateb gan Sefydliad Cynllunio Trefol Brenhinol / Evidence from Royal Town  
Planning Institute

## **Response to: Consultation on the Great Repeal Bill and its implications for Wales**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 24,000 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.

We welcome the opportunity to provide a submission in response to the above consultation. Our response focuses on the planning sector and profession. This 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.

We note the Great Repeal Bill will be necessary in order to deal with European Union (EU) Directives and regulations that are currently on the UK statute books, through domestic laws, directly effective EU directives and regulations, or, binding European case law.

RTPI Cymru supports the wish already expressed by the Welsh Government that powers being repatriated to the UK from the European Union should wherever appropriate be transferred to the devolved administration. This should be done in ways that are straightforward and legally sound to avoid any future challenges.

RTPI Cymru considers the top priorities in relation to planning and the profession likely to be affected by the exit of the UK from the EU to be: impact on major projects, employment and skills, university research opportunities, the range of funding to support regional development and research, including the European Structural Funds and research funding, partnership opportunities, and the impact of uncertainty on development.

The RTPI has responded in depth on the impact of the UK leaving the EU on planners and planning across the UK. Our position on the UK impact is available on our website:

[http://www.rtpi.org.uk/media/2277092/brexit\\_update\\_for\\_rtpi\\_members\\_website\\_ss.pdf](http://www.rtpi.org.uk/media/2277092/brexit_update_for_rtpi_members_website_ss.pdf) The influence of the EU on planning practice has been through Directives, which are transposed into legislation within the UK nations. These remain law unless the UK parliaments/assemblies remove them. Concern has been expressed about some environmental legislation. As regards wildlife the UK had strong legislation before 1973 and has strong lobbies in support of this. The situation around climate change is arguably more complex.

The Birds and Habitats Directives, the Environmental Impact Assessment and Strategic Environmental Assessment Directives, and the Water and Waste Framework Directives are often cited as the one tranche of legislation that directly affects the planning profession. Planners will need to play a part in ensuring that whatever follows from these for the UK do not represent a lowering of environmental standards and are in some way pegged to the best international standards. There is a great potential role for the UK in leading on environmental standards in the future. These are an example of legislation that should be transferred to the devolved Nations.

The EU has set a target to reduce emissions by 20% by 2020 (from 1990 levels), and European leaders have committed to a further emission reductions of 80-95% by 2050. The EU has produced a low carbon roadmap, which shows how this could be achieved. In 2008 the UK established the Climate Change Act which commits the UK to making an 80% emissions reduction by 2050. An interim target of 56% by 2030 was set in 2016. The UK was also part of a wider European pledge to reduce emissions at COP21. The UK has made progress on reducing emissions from the power sector, but lacks sufficient policies to continue this progress or broaden it to other sectors of the economy like housing and transport.

The Renewable Energy Directive (RED) sets a target to provide 20% of European energy from renewables by 2020, with a target of 10% of final energy consumption in the transport sector. Renewables here include biomass, wind power, solar power, hydropower, and geothermal energy. Following RED, the UK set an overall renewable renewables target of 15% by 2020, comprising 30% from renewable electricity, 12% from renewable heat and 10% from renewable transport. The UK has made good progress on the electricity target, but is not on course to meet targets for heat and transport. It is unclear whether these targets will continue after leaving the EU.

The Energy Efficiency Directive (EED) sets a target to increase energy efficiency by 20% by 2020 (from 2007 levels) and requires Member

States to set legislation which supports this. The Commission has proposed to increase this target to 30% by 2030. The European Performance of Buildings Directive (EPBD) also requires all new homes to be 'nearly zeroenergy' by 2020. It is unclear whether these targets will continue after leaving the EU.

The Department for Business, Energy and Industrial Strategy (BEIS) has committed to publishing an Emissions Reductions Plan. This needs to set out how the UK will boost renewable energy deployment in the heat and transport sectors, improve the energy efficiency of new and existing buildings, and meet the emission reduction targets for all sectors of the economy as required by the UK Climate Change Act.

Other issues to be considered will be the effect of the exit on EU Common Agricultural Policy and its attendant subsidies to UK farming and the impact on rural land management, rural land values and rural economies. Also with regard to exiting the Common Fisheries Policy, consideration will need to be given to what, if any, impact will be on marine spatial plans and the economies of areas dependent on fishing. Issues for Skills, Standards and the Workforce.

These issues highlight the need for strategic spatial planning in Wales, as proposed by the Planning (Wales) Act 2015. Strategic planning enables an approach which can cover a wide range of areas of public policy and encourages effective cooperation for planning across boundaries. The general principles of strategic planning are a useful focus at a time when there are many uncertainties, requiring us to consider environmental objectives, long term economic benefits, as well as the need for a high quality of life, which are all key contributors to economic competitiveness.

The RTPI has been working to influence the UK Government on issues that will affect the planning profession post and during Brexit negotiations and the Great Repeal Bill. At a UK level, we have joined forces with the other major built environment Institutes – RIBA, RICS and CIOB to ally our messages. We wrote to Ministers during the previous term for Government to flag up our concerns on:

- Access to skills
- Common standards (particularly mutual recognition on technical standards and qualifications)
- Research excellence
- Infrastructure investment
- Devolution commitment
- Community development

The Joint Institutes have consequently been engaging in meetings with UK Ministers and civil servants from a number of Departments, including the Ministry for Exiting the European Union.

If you require further assistance, please contact RTPI Cymru.

## **1. The Great Repeal Bill and the broader legislative approach to Brexit**

### **1.1 What is your view on the UK Government's approach to legislating for Brexit and the implications this might have for Wales, devolution and the balance of power between the Assembly and Welsh Ministers?**

RTPI Cymru supports the principle that where powers which concern devolved matters are transferred from the European Union to the United Kingdom they should be transferred to the appropriate devolved administrations including the Welsh Government. Unless there are particular circumstances these powers should be directly delegated to Welsh Ministers rather than to the National Assembly for Wales in order to avoid delay and additional procedures.

## **2. The granting of delegated powers [Paragraph 4.6](#) of the White Paper states that:**

**“Legislation that is within the competence of the devolved legislatures or ministers giving effect to EU law will also need to be amended as we leave the EU. We therefore propose that the Bill also gives the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, in line with the power we propose should be held by UK ministers.”**

**The power to grant delegated powers to UK Ministers rests with Parliament. In areas of devolved competence, the Assembly holds the power to grant delegated powers to Welsh Ministers, though Parliament can also grant these powers to Welsh Ministers.**

### **2.1 How can the drafting of the Great Repeal Bill ensure that the Assembly has sufficient oversight over powers delegated to Welsh Ministers?**

Where already devolved legislation needs to be amended to accord with the return of powers from the European Union we agree that there should be provision for the Welsh Ministers to amend that legislation. However we caution that this should be subject to detailed arrangements which avoid the risk of accusations that there is no opportunity for scrutiny, and which reduce the likelihood of legal challenge.

Arrangements to achieve these aims would be agreed by both the National Assembly and Welsh Ministers. Included could be requirements for proposed amendments to be advertised for comment and for the amendments and comments received to be scrutinised by the Legislation Committee of the National Assembly. The proposed amendments would need to be accompanied by supporting information and explanation together with a clear statement on their legal soundness in order to achieve safety from challenge. There could be a mechanism to allow exceptionally for amendments to be referred for discussion at another relevant Assembly Committee or plenary. Clear time limits for all stages would be needed to avoid delay.

### **3. Scrutiny and control of delegated powers**

**The White Paper sets out a range of constraints that are to be placed on the delegated powers provided to UK Ministers and, by extension, Welsh Ministers. These include limiting the powers so that they are not available to Government for making policy changes and time-limiting the powers ([see paragraphs 3.16 to 3.25](#)).**

#### **3.1 Are the constraints proposed in the White Paper sufficient?**

We agree with the suggested constraints of a time limit on granting these amendment powers to Welsh Ministers and on limiting amendments to procedural changes. Any changes to policy should be separately brought forward through established legislative means.

The White Paper recognises that Parliament will need to be satisfied that the procedures in the Bill for making and approving secondary legislation are appropriate.

#### **3.2 Should the Assembly be free to determine the procedures for making and approving secondary legislation where powers are delegated to Welsh Ministers?**

See below.

#### **3.3 If so, how can this be reflected in the drafting of the Great Repeal Bill?**

We agree that arrangements in Wales for how these Ministerial powers are used should be devolved. As suggested, above those arrangements need to be agreed by both the National Assembly and Welsh Ministers and that should be reflected in drafting the Bill, while avoiding detail. However the Bill could also give specific

responsibility to the Counsel General of the Welsh Government to oversee the preparation of the arrangements to ensure they are entirely within devolved competences and are legally sound.

### **3.4 If the Assembly is free to determine the procedures for making and approving secondary legislation where powers are delegated to Welsh Ministers what procedures should it consider?**

The House of Lords Constitution Committee has suggested that Parliament could establish a sifting mechanism within Parliament that considers whether a particular piece of delegated legislation contains policy decisions that should trigger an enhanced form of parliamentary scrutiny ([see Chapter 3](#)).

### **3.4 Should the Assembly consider a similar sifting mechanism for considering delegated legislation brought forward under the Great Repeal Bill?**

The arrangements to be agreed would include ensuring only procedural matters are addressed and policy avoided as well as the need for supporting material, the format for publication, advertising and consultation of proposed amendments. Also as suggested above a role for the legislation committee and exceptionally for other committees and plenary. Also the continuing role of the Counsel General. Where suggested changes emerge from the consultation and scrutiny process the arrangements should allow for consideration of these. The agreed arrangements should be published in a suitable form which could be standing orders, a memorandum of understanding or another format.

### **3.5 How could such a system work in practice?**

See below

### **3.6 Would provision for this, if any, should be made under the Great Repeal Bill?**

It would of course be inappropriate for an external body such as the House of Lords to have any role in regard to the Welsh arrangements. As there is no equivalent body for Wales it would be best to concentrate on ensuring the arrangements agreed by National Assembly and Welsh Government are effective and legally sound. As noted above the Bill could refer to such arrangements to be agreed by the Assembly and Welsh Government with possibly a role for the Counsel General. There would be no need for additional provision for scrutiny in the Bill.

The House of Lords Constitution Committee has suggested that Ministers should provide specific information in Explanatory Memoranda accompanying statutory instruments to aid the scrutiny process ([see Chapter 3](#)).

- 3.7 **What information should Welsh Ministers be required to include in explanatory memoranda accompanying statutory instruments brought forward under the Great Repeal Bill to demonstrate that the legislation meets any constraints on powers?**
- 3.8 **Should the Assembly set these requirements in its own Standing Orders?**
- 3.9 **If it should, how could/should this be reflected in the drafting of the Great Repeal Bill?**

It is likely that an explanatory memoranda to accompany proposed amendments from Welsh Ministers would be needed to ensure appropriate consultation, clarity and to help avoid legal challenge. The contents required of such memoranda should be set out for clarity as part of the arrangements agreed by the Assembly and the Welsh Government so not requiring a separate document. References in the Bill to arrangements for Wales being agreed by the National Assembly and the Welsh Government might indicate they would cover matters such as consultation and the information to be published while leaving detail to the Assembly.

#### **Engaging with stakeholders**

4. **How can the Assembly ensure that the Welsh people, stakeholders and organisations have sufficient opportunity to contribute to the legislative processes established by the Great Repeal Bill?**

The possible arrangements discussed above address the issue of ensuring engagement and consultation when Welsh Ministers propose procedural amendments to existing legislation to accord with the new circumstances after leaving the European Union.

**We are happy to receive any other views that you might have on the approach to legislating for Brexit, the role of the Assembly and the role of Welsh Ministers in the process.**

There is likely to be a large volume of work in making necessary procedural amendments to existing legislation. The Welsh

Government should ensure that work is planned so that it does not delay new initiatives and policy developments. In some instances the analysis of current legislation needing procedural change may indicate the opportunity or need for policy changes. It is important such opportunities and needs are made explicitly known to Ministers so that they can be pursued as soon as circumstances allow.