

## **Estates Gazette Article– The emergence of Contemporary Welsh Law and the implications for the Property Market**

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It was inevitable that following devolution of powers to the Welsh Assembly Government, there would develop a body of Welsh laws akin to those found in Scotland.

Although not yet on the same footing as Scotland the legislative powers of Wales were bound to create a legislative book in addition to and separate from that in England.

So what are the existing differences between English and Welsh law, are they set to increase and what does this mean for the property industry operating within the Principality's borders?

Starting with the basics, the original root for devolution was set down in the Government of Wales Act 1998. Subsequently the Government of Wales Act 2006 (the '2006 Act') came into force, strengthening the original devolutionary settlement in a number of ways.

The 2006 Act outlines the current law making powers of the devolved authority, and includes the significant introduction of 'Assembly Measures', which have the same status as Acts of Parliament.

In essence the 2006 Act forms a "constitution for Wales". It initially provided for the formal legal separation of the former National Assembly for Wales into two distinct bodies.

- The first is the legislature, still called the National Assembly for Wales, which is made up of 60 assembly members.
- The second is the executive, known as the Welsh Assembly Government, comprising the First Minister, the Deputy First Minister and the Counsel General, who advises on legal matters.

It is important not to mix up the two 'Assembly' titles as they are distinct bodies.

The National Assembly for Wales Commission was also established under the 2006 Act and owns property holdings, provides staff and runs support services. From 1<sup>st</sup> April 2007, the 2006 Act provides for the establishment and

maintenance of the Welsh Consolidated Fund, where money from the UK parliament for use in Wales is held.

Although the Welsh Assembly Government is keen to avoid legislative confusion and understandably sees no benefit in creating a completely separate legal system, the way Wales is now statutorily governed will mean that new systems and policies are inevitable.

In June last year, the Welsh Assembly Government, a coalition of Labour and Plaid Cymru, issued their policy roadmap for the current four year term, known as the One Wales Agenda.

It is ambitious and dynamic in its approach and is evidence of the Welsh Assembly Government's intention to use its devolved powers to maximum effect. We will therefore see over the next few years, the Welsh Assembly Government looking to legislate on matters of national importance to the Principality, with particular themes of economic and sustainable development at the fore.

Comparable laws, within the property sphere, will arise in a number of distinct areas of devolved competence, including housing, planning, environmental and development.

The Welsh Assembly Government is likely to focus in these early days on using its legislative timetable to tackle issues such as health and local government.

There is already a separate planning system in Wales to that in England. Even though the differences between the two planning systems to date are largely technical in essence, stakeholders need to be aware that they are dealing with a stand alone planning process.

Technical Notes (TANs) are produced by the Planning Division of the Welsh Assembly Government based on the following policy documents:- 'Planning Policy Wales' and 'Planning – Delivering for Wales'. This series of TANs need to be taken into consideration on planning matters in Wales rather than those issued in England.

In housing, the property market in Wales is subject to the Welsh Assembly Government's targets on sustainable development, energy efficiency and quality.

The One Wales Agenda set annual carbon reduction targets and equivalent emissions reduction targets of 3% by 2011 in areas of devolved competence.

Areas of devolved competence include: Agriculture, fisheries, forestry and rural development, Ancient monuments and historic buildings, Culture, Economic development, Education and training, Environment, Fire and rescue services and promotion of fire safety, Food, Health and health services, Highways and

transport, Housing, Local government, Public administration, National Assembly for Wales, Social welfare, Sport and recreation, Tourism, Town and country planning, Water and flood defense, and Welsh language.

Wales will therefore have specific targets for the residential, public and transport sectors to meet this goal.

The Welsh Housing Quality Standard, aimed primarily at providing social landlords with guidance against which to assess the quality of housing stock, applies to all affordable housing schemes and is distinct from any UK scheme.

The One Wales Agenda also commits the Welsh Assembly Government to the provision for local authorities of the right to require 100% affordable housing for development sites within areas of housing pressure; the provision of control powers to local authorities to prevent the conversion of houses into second homes in areas of housing pressure; and allocation of affordable housing quotas for sizeable residential development sites.

In infrastructure matters, the Welsh Assembly Government has devolved competence for PPP and has spent a significant amount of time recently reviewing its position with regard to such arrangements for taking forward its sustainable development programme.

Close links with the EU mean that we are likely to see projects developing in Wales over the next few years independently of anything emanating from London. Any property stakeholders interested in this will need to be conversant with the various Welsh authorities leading the charge and their distinct Welsh procedures and regulations.

Wales is not just another region governed by Whitehall and subject solely to the laws emanating from the UK Parliament. The business culture in Wales, alongside the growing body of Welsh legislation, is such that those seeking to operate in this market need to seek guidance on legal requirements and operational sensitivities.

It has been the cause of some mirth in Welsh legal circles to hear that a major City law firm seeking to serve landlord and tenant notices in respect of properties in Wales, served multiple forms of the notice in the names of the National Assembly of Wales, the Welsh Assembly Government and the National Assembly for Wales Commission. This was a perfectly sensible thing for them to do, since it was not clear to them how title had devolved through the devolution process.

And indeed, why should it. Welsh law and property issues are a matter for Welsh lawyers and professional advisors. It is they who are best placed to keep up with the rolling tide of devolutionary matters, guidance and subordinate legislation that

will inevitably pour out of the Senedd on the back of the ambitious and locally engineered policy initiatives of the Welsh Assembly Government.

The message from Wales today is very clear - Wales is open for business! Wales has a clear commitment to sustainable economic development. Property and construction will be at the heart of Welsh economic development, even in the current economic climate.