



Llywodraeth Cymru  
Welsh Government

[www.cymru.gov.uk](http://www.cymru.gov.uk)

Welsh Government

## Consultation – summary of response

# Proposed amendments to legislation on the power to override easements and other rights

January 2015



# Table of Contents

<b>1. INTRODUCTION</b>	<b>1</b>
<b>2. RESPONSES</b>	<b>2</b>
<b>3. KEY THEMES</b>	<b>5</b>
<b>4. SUMMARY OF RESPONSES</b>	<b>6</b>

**ANNEX A - LIST OF RESPONDENTS BY CATEGORY**

**ANNEX B - STATISTICAL OVERVIEW OF ALL RESPONSES**

# 1. Introduction

- 1.1 The “Use of Land: Power to Override Easements and Other Rights” consultation document was launched on 6 October 2014 and was open for responses until 16 January 2015. A total of 2 questions were set out in the consultation document, with a standardised form provided for ease of response.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government’s response and the next steps.

## 2. Responses

- 2.1 On 6 October 2014 over 200 core and key stakeholders were targeted by email and notified of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government. This included all local planning authorities in Wales, public bodies, special interest groups and other groups. Other interest groups with specialist knowledge of the subject area were also notified of the consultation. The consultation was made available on the Welsh Government's consultation website and a press release was issued. A list of the consultees notified of the consultation was also published on the Welsh Government's consultation website.
- 2.2 The consultation generated 42 responses and we thank all those who responded to the consultation.
- 2.3 A consultation form was provided as an annex to the consultation document and separately on the Welsh Government's consultation website. An online consultation form was also available for respondents to submit their comments. Respondents were asked to assign themselves to one of seven broad respondent categories. Table 1 below shows the breakdown of respondents.

<b>Table 1 - Breakdown of Respondents</b>		
<b>Category</b>	<b>Number</b>	<b>% of total</b>
Businesses / Planning Consultants	5	12
Local Authorities (including National Park Authorities)	26	62
Government Agency/Other Public Sector	3	7
Professional Bodies/Interest Groups	4	10
Voluntary Sector	0	0
Others (other groups not listed)	4	10
<b>Total</b>	<b>42</b>	

2.4 Consultation question 1 posed a policy specific question; with question 2 inviting any additional comments from respondents (see Table 2 below). A statistical overview of the responses, showing the nature of the response to question 1 where a 'Yes', 'Yes (subject to further comment)', or 'No' response was sought, is presented in Annex B. Where respondents did not complete the consultation form, but in view of the Welsh Government their comments related to a specific consultation question, these were considered and recorded as 'Don't Know'.

**Table 2: Consultation Questions**

<b>Q1</b>	<p>Do you agree that the following provisions should be amended so that the overriding of easements and other rights in Wales will not only apply to the erection, construction or carrying out or maintenance of any building or works phase, but also to the permanent new use of the site when use is in accordance with planning permission?</p> <p>(i) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980 ii) Section 19 of the New Towns Act 1981 iii) Paragraph 5 of Schedule 10 to the Housing Act 1988 iv) Section 237 of the Town and Country Planning Act 1990</p>
<b>Q2</b>	<p>We have asked a specific question; if you have any related issues which we have not specifically addressed, please use this space to report them.</p>

2.5 A full list of all respondents and the categories they were assigned to can be found in Appendix A. Copies of the consultation responses received will be published in their original form on the Welsh Government's consultation website

### 3. Key Themes

3.1 A summary of the key findings under each consultation question is set out below. Section 4 provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government's response.

**Question 1.** Do you agree that the following provisions should be amended so that the overriding of easements and other rights in Wales will not only apply to the erection, construction or carrying out or maintenance of any building or works phase, but also to the permanent new use of the site when use is in accordance with planning permission?

(i) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980

ii) Section 19 of the New Towns Act 1981

iii) Paragraph 5 of Schedule 10 to the Housing Act 1988

iv) Section 237 of the Town and Country Planning Act 1990

3.2 Key themes in response to question 1 were as follows:

- That the proposed amendments will bring the law into line with England and will help facilitate development.
- Support for the proposed amendments in Wales as the current situation is not satisfactory.

3.3 An overview and statistical analysis<sup>1</sup> of the views expressed on each question is contained in section 4.

---

<sup>1</sup> Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

## 4. Summary of Responses

<b>Q1</b>	<p>Do you agree that the following provisions should be amended so that the overriding of easements and other rights in Wales will not only apply to the erection, construction or carrying out or maintenance of any building or works phase, but also to the permanent new use of the site when use is in accordance with planning permission?</p> <p>(i) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980</p> <p>ii) Section 19 of the New Towns Act 1981</p> <p>iii) Paragraph 5 of Schedule 10 to the Housing Act 1988</p> <p>iv) Section 237 of the Town and Country Planning Act 1990</p>
<p>The proposed amendment to the provisions outlined in consultation question 1 would allow easements and other rights on land to be overridden for the use of the land i.e. on a permanent basis, and not just for the carrying out of works/maintenance/erection of buildings on that land i.e. on a temporary basis.</p>	

### Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	4	0	1	0	5
B	Local Authorities (including National Park Authorities)	25	0	0	0	25
C	Government Agency/Other Public Sector	4	0	0	0	4
D	Professional Bodies/Interest Groups	3	1	0	0	4
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	1	0	3	4
<b>Total all respondents</b>		<b>36</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>42</b>

	Yes	Yes (subject to further comment)	No	Don't Know
<b>Overall percentage</b>	<b>86%</b>	<b>5%</b>	<b>7%</b>	<b>2%</b>

### Statistical review

4.1 There is an overall consensus that the stated provisions should be amended in Wales. The majority of responses who supported the proposals came from the local planning authority sector. Although 100% of the responses from the 'Government Agency/Other Public Sector' and 'Professional Bodies/Interest Groups' sectors also agreed with the proposed amendments. Following analysis of the responses to question 1, the 'Yes (subject to further comment)' response received from the Professional Body/Interest Group was a supportive comment.

### Overview

4.2 Overall, there was clear support for the amendment to the stated provisions so that the overriding of easements and other rights in Wales will not only apply to the erection, construction or carrying out or maintenance of any building or works phase but also to the permanent new use of the site when use is in accordance with planning permission.

4.3 Respondents stated that the proposed amendments will negate the need to obtain expensive indemnity insurance for ancient and obsolete covenants at a time when Local Authority resources are limited. Furthermore, that the current anomaly in legislation should be corrected because there is an impractical situation where the works can be carried out but then cannot be used.

4.4 There was support for maintaining the principle of maintaining coherence in relation to the law on compulsory purchase as recommended by the Independent Advisory Group on planning reform in Wales.

- 4.5 One respondent stated that the proposed amendments will simplify the process of working with the planning permission for the benefit of the community and will ensure that development will not be prevented because of historic limitations, which are no longer relevant.

#### 1A Welsh Government Response

It is recognised there is overwhelming support for the proposed amendments and that no revisions to the proposed amendments are required.

#### Q2

We have asked a specific question; if you have any related issues which we have not specifically addressed, please use this space to report them.

This question welcomed responses from consultees which were not addressed by the four questions posed in the consultation document.

- 4.6 This section sets out a summary of the responses received to question 2. While this did not ask a specific question in relation to the proposed amendments to the provisions outlined in question 1, it did offer the opportunity for respondents to inform the Welsh Government of their views that were not addressed in Question 1. Where in the view of the Welsh Government comments related directly to question 1, but were included under question 2, these were considered as part of the analysis to question 1.
- 4.7 Many of the respondents used question 2 to express their general views on the general power to override easements and other rights and the need for planning permission.
- 4.8 An amendment to the general power for easements and other rights to be overridden and the requirement for planning permission was not in the scope of this consultation as they are established elsewhere.

4.9 The consultation document clearly set out that the scope of the proposed amendment was to specific provisions in existing legislation to ensure a current anomaly in law was corrected and that planning permission would always be required.

4.10 General comments received to question 2, and did not relate to question 1, are summarised below:

- easements and other rights should not be overridden without planning permission and legal/ democratic considerations;
- if there are existing easements and other rights, where planning has been previously refused and circumstances have changed which might mean new planning permission, re-consultation should take place by planning authorities with any persons affected; and
- it is important that those who benefit from easements and other rights on affected land are fully considered and alternative easements and rights are considered should such a need still exist. This includes re-directing private rights of way when necessary.

### ***Next steps***

4.11 This ‘Summary of Responses Report’ has been published alongside an ‘Index of Responses’ and a copy of all the responses received to the consultation.

4.12 A draft Order will now be prepared which will amend the provisions in Wales relating to overriding of easements and other rights set out in question 1 of the consultation. A draft of the Order will be laid before, and approved by, resolution of the National Assembly for Wales in Summer 2015.

## ANNEX A - LIST OF RESPONDENTS BY CATEGORY

A1.1 The table below indicates the categories to which respondents assigned themselves to in completing the consultation form. Respondents 002, 025 and 027 were assigned a category by Welsh Government officials as no preference was indicated in the consultation response. For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the index below and from the published consultation responses.

<b>Business / Planning Consultants</b>		017	Neath Port Talbot County Borough Council
001	Wynne Jones (Planning Consultant)	018	Anonymous
005	Manor Parks	019	Isle of Anglesey County Council
029	National Grid	020	Rhondda Cynon Taf County Borough Council (Paul Lucas)
030	RWE Generation UK plc	021	Caerphilly County Borough Council - Legal Department
036	Persimmon Homes (East Wales)	022	Caerphilly County Borough Council (Planning Department)
<b>Local Planning Authorities</b>			
003	Pembrokeshire Coast National Park Authority	023	Rhondda Cynon Taf County Borough Council - Planning Department
004	City and Council of Swansea (Adrian James)	026	National Parks Wales
006	Conwy County Borough Council	028	Denbighshire County Council (Angela Loftus)
007	Anonymous	031	Gwynedd Council (Planning Department)
008	Council of the City and County of Cardiff	039	Pembrokeshire County Council (Dave Popplewell)
009	Powys County Council	040	Gwynedd Council - Legal Department
010	Monmouthshire County Council	041	Ceredigion County Council – Planning Department
011	Blaenau Gwent County Borough Council		
012	Denbighshire County Council – Legal Department	<b>Gov. Agency/Other Public Sector</b>	
013	City and Council of Swansea (Patrick Arran)	014	Vale of Glamorgan
015	Ceredigion County Council (Rory Cridland)	032	One Voice Wales
016	Pembrokeshire County Council (Robert Lewis)	034	The Coal Authority

035	Cyfoeth Naturiol Cymru/Natural Resources Wales
<b>Professional Bodies/Interest Groups</b>	
024	Institution of Civil Engineers Wales Cymru
037	Institute of Historic Building Conservation
038	The Law Society
042	Home Builders Federation
<b>Others</b>	
002	Kathleen Gower
025	Miss Joan Bird
027	Pippa Tee
033	Dwr Cymru Welsh Water

## ANNEX B - STATISTICAL OVERVIEW OF ALL RESPONSES

Q1

Do you agree that the following provisions should be amended so that the overriding of easements and other rights in Wales will not only apply to the erection, construction or carrying out or maintenance of any building or works phase, but also to the permanent new use of the site when use is in accordance with planning permission?

- (i) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980
- ii) Section 19 of the New Towns Act 1981
- iii) Paragraph 5 of Schedule 10 to the Housing Act 1988
- iv) Section 237 of the Town and Country Planning Act 1990

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall %
Yes	4	25	4	3	0	0	36	86
Yes (F/C)	0	0	0	1	0	1	2	5
No	1	0	0	0	0	0	1	2
DK	0	0	0	0	0	3	3	7
	5	25	4	4	0	4	42	