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Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Consultation on proposals for secondary legislation to support the Historic Environment (Wales) Act 2016 and various best-practice guidance documents

Date of issue: **11 July 2016**

Action required: Responses by **3 October 2016**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This consultation seeks your views on four proposals for secondary legislation with one draft ancillary guidance document and five draft best-practice guidance documents. All have been developed as components of a wider programme to improve the protection and management of the Welsh historic environment that is linked to the implementation of the Historic Environment (Wales) Act 2016.

The draft documents presented here make reference to *Technical Advice Note 24: The Historic Environment*, which has also been drafted as part of that wider programme to furnish advice on the role of the planning system in the sustainable management of the historic environment. *Technical Advice Note 24* is currently the subject of a consultation being conducted by the Welsh Government's Planning Division in parallel with this one. You may, therefore, find it helpful to consider the two consultations in conjunction.

How to respond

This consultation will close on 3 October 2016. You may respond by email or post.

Email

Please complete the consultation response form at Annex 7 and send it to:

historicenvironmentleg@wales.gsi.gov.uk

Post

Please complete the consultation response form at Annex 7 and send it to:

Regulations and Guidance Consultation 1
Legislation and Policy Team
Historic Environment Service (Cadw)
Welsh Government
Plas Carew
Unit 5/7 Cefn Coed
Parc Nantgarw
Cardiff
CF15 7QQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Consultation on chapter 6 of *Planning Policy Wales*, 'The Historic Environment' (closed)
<http://gov.wales/consultations/planning/proposed-changes-to-planning-policy-wales-chapter-6-the-historic-environment/?status=open&lang=en>

Consultation on *Technical Advice Note 24: The Historic Environment*

<http://gov.wales/consultations/planning>

Conservation Principles for the Sustainable Management of the Historic Environment in Wales

http://cadw.gov.wales/docs/cadw/publications/Conservation_Principles_EN.pdf

Contact details

For further information on this consultation, please contact:

historicenvironmentleg@wales.gsi.gov.uk

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01443 336091 / 01443 336090

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Introduction

1. The historic environment is central to Wales' culture and character and contributes to our sense of place and local distinctiveness. It is a powerful driver for community regeneration and makes a significant contribution to our nation's prosperity. It is vital, therefore, that the historic environment is appreciated, protected, actively managed and made accessible for the general well-being of present and future generations.
2. The Historic Environment (Wales) Act 2016, which received Royal Assent on 21 March 2016, was enacted to make important improvements to the existing systems for the protection and management of the Welsh historic environment.¹ It will also stand at the centre of an integrated package of secondary legislation, new and updated planning policy and advice, and best-practice guidance on a wide range of topics. Taken together, these will support and promote the careful management of change in the historic environment in accordance with current conservation philosophy and practice.
3. This entire suite of legislation, policy, advice and guidance has been planned in light of the seven goals set out in the Well-being of Future Generations (Wales) Act 2015.² Those well-being goals give public bodies a shared vision of 'the Wales we want' towards which they can work. The regulations and guidance documents presented here for consultation have been informed by that vision and will contribute to its realisation.

A programme of consultations

4. Since the secondary legislation, policy, advice and guidance that will complement the Historic Environment (Wales) Act 2016 will have wide-ranging effects for the Welsh historic environment, it is important to obtain the views of stakeholders and the wider public during their development. A number of public consultations will therefore be conducted during 2016.
5. The first, the consultation on the revised historic environment chapter (chapter 6) of *Planning Policy Wales*, has already taken place.³ The consultation closed on 13 June and its outcome and the final version of the chapter will be available in the autumn.
6. In parallel with the present consultation, the Welsh Government's Planning Division is undertaking a consultation on the new *Technical Advice Note 24: The Historic Environment*. The consultation documents are available on <http://gov.wales/consultations/planning/?lang=en>.

¹ <http://www.legislation.gov.uk/anaw/2016/4/contents/enacted>

² <http://www.legislation.gov.uk/anaw/2015/2/contents>

³ <http://gov.wales/consultations/planning/proposed-changes-to-planning-policy-wales-chapter-6-the-historic-environment/?lang=en>

7. Further consultations will be held later in 2016 and in early 2017 to obtain responses on proposals to implement other aspects of the Historic Environment (Wales) Act 2016 and further guidance documents.

The present consultation

8. This consultation covers a number of different proposals and guidance documents. Since it treats a wide range of topics relating to the historic environment, you may find that some of the questions fall outside your interest or experience. Therefore, please feel free to answer as many or as few of the questions as you like.
9. The consultation covers proposals on:
 - A. Regulations under the Historic Environment (Wales) Act 2016 to set the interest rate for costs accrued from urgent works (paragraphs 12–14)
 - B. Procedures to claim for compensation associated with temporary stop notices for scheduled monuments and listed buildings (paragraphs 15–21)
 - C. Simplification of scheduled monument consent procedures (paragraphs 22–26)
 - D. A requirement to include heritage impact statements as part of the application process for scheduled monument consent, listed building consent and conservation area consent and associated guidance (paragraphs 27–38).
10. It also includes the following best-practice guidance documents:
 - E. *Managing Change to Listed Buildings in Wales* (paragraphs 39–41)
 - F. *Managing Change in World Heritage Sites in Wales* (paragraphs 42–43)
 - G. *Managing Conservation Areas in Wales* (paragraphs 44–45)
 - H. *Managing Lists of Historic Assets of Special Local Interest in Wales* (paragraphs 46–48)
 - I. *Setting of Historic Assets in Wales* (paragraphs 49–50).
11. The consultation provides a brief discussion of each proposal or guidance document, poses relevant questions and, where appropriate, directs the reader to the annex containing the draft guidance.

Proposals for regulations and procedural changes

A. Regulations to set the interest rate for costs accrued from urgent works

12. Section 30 of the Historic Environment (Wales) Act 2016 amends sections 54 and 55 of the Planning (Listed Building and Conservation Areas) Act 1990, which regulate the use of urgent works for the preservation of a listed building.
13. The new Act provides for the expenses incurred by a local authority in the execution of urgent works to be a charge on the land on which the listed building stands. It also provides for the imposition of interest on the outstanding sum at a rate to be prescribed by order of the Welsh Ministers.
14. It is proposed that the regulations will set out that local authorities may not charge interest higher than the Bank of England Base Rate plus 2%. The aim is to set a rate that will be fair to both the owner of the building and the local authority.

Q1.	Do you agree that the interest rate that should be included in regulations is the Bank of England Base Rate plus 2%?
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B. Procedure to claim for compensation associated with temporary stop notices for scheduled monuments and listed buildings

15. Sections 13 and 29 of the Historic Environment (Wales) Act 2016 introduce temporary stop notices to be used to bring unauthorised works to an immediate halt on both scheduled monuments and listed buildings.
16. The Act sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. For example, it can be claimed if the works specified in a temporary stop notice are not unauthorised because consent is not required or has been granted on or before the date the notice is first displayed.
17. The Act provides a power for the Welsh Ministers to issue regulations prescribing the time and manner in which a compensation claim must be made.
18. The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 already prescribe the time and manner in which compensation claims must be made in certain circumstances, such as on the refusal, revocation or modification of listed building consent.

19. Similarly, regulations are already in place for compensation claims under the Ancient Monuments and Archaeological Areas Act 1979 in the form of The Ancient Monuments (Claims for Compensation) (Wales) Regulations 1991.
20. Both sets of regulations, in the main, require claims for compensation to be made in writing within 6 months of action being taken (with the exception of claims for compensation by purchase notice on refusal or conditional grant of listed building consent).
21. It is proposed that the procedures relating to claims for compensation arising from the service of temporary stop notices for scheduled monuments or listed buildings should be similar to those that are already in place. Claims, therefore, will need to be made within six months of the date that the notice was first displayed, unless the notice is withdrawn by the Welsh Ministers or a local planning authority other than following a grant of consent authorising the works. In that case, the claim for compensation will need to be made within six months from the date of the withdrawal of the temporary stop notice.

Q2.

Do you agree with the time period in which a claim for compensation associated with a temporary stop notice must be made?

C. Simplification of the scheduled monument consent process

22. The Ancient Monuments and Archaeological Areas Act 1979 makes it an offence to carry out specified works to a scheduled monument unless they are authorised either by scheduled monument consent granted by the Welsh Ministers, or as permitted works under certain class consents. At present, every scheduled monument consent application is submitted to the Welsh Ministers on a form prescribed in regulations.
23. Once the Welsh Ministers have considered an application, they send an interim decision letter to the applicant, which includes any conditions that they propose to attach to the consent. The applicant may accept the proposed decision or make further representations before the application is determined and the final written consent decision letter is issued.
24. Most types of work to a scheduled monument require consent, and there is currently no alternative to the full scheduled monument consent process. Even minor works of maintenance or repair that would benefit a monument require a full application and an interim decision, which can be a significant disincentive for owners.
25. Section 5 of the Historic Environment (Wales) Act 2016 introduces the power to make regulations that will establish a simplified application procedure for scheduled monument consent. This will permit the Welsh Ministers, with the agreement of the owner, to authorise a defined set of minor works without the need for an application form or interim decision letter.

26. It is intended that the Welsh Ministers will be able to issue a letter or email authorising specified works under the Ancient Monuments and Archaeological Areas Act 1979. It will only be possible to authorise minor works in this way. The works will have to be: uncontentious, subject only to standard conditions and capable of being fully specified in terms of nature and location in the letter/email.

Q3.	Do you agree with the mechanism proposed for a simplified scheduled monument consent process for uncontentious works?
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D. Heritage impact statements and associated guidance

27. During the development of the Historic Environment (Wales) Act 2016, the introduction of heritage impact assessment as an integral component of consent applications for changes to historic assets was supported by both stakeholders and research on the listed building consent process commissioned from Hyder Consulting.⁴
28. In 2015, the Welsh Government consulted on proposed amendments to secondary legislation for development management.⁵ The document explained the intention to introduce a requirement for heritage impact assessments for applications for scheduled monument consent, listed building consent and conservation area consent. Design and access issues would be treated in the broader consideration of the impact of a proposal on heritage significance. The response to the consultation was very supportive of this approach.
29. As a consequence, we are now consulting on the changes to secondary legislation that will be needed to introduce that requirement and on a guidance document on the heritage impact assessment process.
30. Heritage impact assessment is a structured process to make sure that the significance of a historic asset is taken into account when developing and designing proposals for change. It is a core part of the design process, which tests whether proposals for change to a historic asset are appropriate by assessing their impact on its significance.
31. An assessment should be proportionate both to the significance of the historic asset and to the degree of change proposed.
32. The results of a heritage impact assessment will be summarised in a heritage impact statement that will be considered alongside a consent application. The heritage impact statement will be the statutory requirement set out in regulations.

⁴ http://cadw.gov.wales/docs/cadw/publications/Refining_the_Listed_Building_Consent_Process_EN.pdf

⁵ <http://gov.wales/consultations/planning/further-secondary-legislation-for-development-management/?status=closed&lang=en>

33. The heritage impact statement will consist of:
 - a. **A summary of the proposed works** — the design proposals, including a brief schedule of works that gives enough information to enable an informed decision to be made.
 - b. **Justification** — what the proposed works are intended to achieve, why they are needed and why the preferred option has been chosen.
 - c. **A statement of significance** — a brief description of the asset and its heritage value. This should make specific reference to those aspects of its value that will be most directly affected by the consent application and explain their contribution to the overall significance of the asset.
 - d. **An assessment of the impact of the proposal** — including potential benefits and harm.
 - e. **A summary of any mitigation measures** — including your choice of approach, relevant aspects of its design and implementation, and any proposals for offsetting damage.
 - f. **An access statement** — if required.
34. All design proposals should foster a culture of inclusion whereby design solutions provide access to the widest possible range of people. It is good practice to think about access issues early in the heritage impact assessment.
35. It is proposed that a formal statement on access will only be necessary when the works for which consent is being sought affect the access arrangements to or within a historic asset (usually a building).
36. The Equality Act 2010 gives people protection from discrimination in a range of areas including the accessing of services, education and employment. The access statement will need to show that all reasonable steps have been taken to provide full access, whilst recognising that the significance of the asset may sometime constrain the options for doing so. The access statement will explain how the proposed work has balanced any duties imposed by the Equality Act with the historical and architectural significance of the building.
37. The guidance document, *Heritage Impact Assessment in Wales* (Annex 1), has been prepared to help owners, occupiers and agents understand when, why and how they should carry out a heritage impact assessment. It also furnishes advice on the presentation of a heritage impact statement.
38. *Heritage Impact Assessment in Wales* should also be used by decision-making authorities alongside *Planning Policy Wales* and *Technical Advice Note 24: The Historic Environment* to inform their own policies and when considering individual applications for planning permission and listed building, scheduled monument and conservation area consent, including pre-applications discussions.

Q4.	Do you agree that a heritage impact statement should be required for every application for scheduled monument consent (unless otherwise agreed with the Welsh Ministers), listed building consent and conservation area consent?
Q5.	Do you agree that heritage impact statements should replace design and access statements for listed building consent applications?
Q6.	Do you agree that an access statement should be required in any heritage impact statement where the proposed works would alter the means of access to or within a listed building?
Q7.	Do you agree with the proposed contents for a heritage impact statement?
Q8.	Does the guidance, <i>Heritage Impact Assessment in Wales</i> , clearly articulate when, why and how to use the heritage impact assessment process and provide useful advice on the presentation of the heritage impact statement?

Best-practice guidance documents

E. *Managing Change to Listed Buildings in Wales*

39. Chapter 6 of *Planning Policy Wales* and *Technical Advice Note 24: The Historic Environment* (currently under consultation) set out the high-level policy and advice on the management of the historic environment in Wales.
40. *Managing Change to Listed Buildings in Wales* (Annex 2) supplements these documents and sets out general principles to consider when making changes to listed buildings. It explains how to apply for listed building consent and provides information on the roles and responsibilities of owners, local planning authorities and the Welsh Government's Historic Environment Service (Cadw).
41. The document is aimed principally at owners of listed buildings and agents acting on their behalf to help them understand the implications of owning a listed building and making changes to it. Decision-making authorities should also use the guidance alongside *Planning Policy Wales* and *Technical Advice Note 24* when considering individual planning and listed building consent applications, including pre-application discussions

Q9.	Will <i>Managing Change to Listed Buildings in Wales</i> provide useful guidance for the owners of listed buildings and their agents? Do you have any suggestions as to how it can be improved?
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F. *Managing Change in World Heritage Sites in Wales*

42. *Managing Change in World Heritage Sites in Wales* (Annex 3) sets out general principles for managing World Heritage Sites in Wales. It supplements the relevant sections of *Planning Policy Wales* and *Technical Advice Note 24: The Historic Environment* (currently under consultation).
43. The document is aimed at national and local planning authorities, statutory undertakers and prospective developers. It seeks to raise the profile and emphasise the significance of World Heritage Sites in Wales and will help decision makers to manage change without adverse impact on the Outstanding Universal Value of World Heritage Sites.

Q10.	Will <i>Managing Change in World Heritage Sites in Wales</i> be effective in helping decision makers protect the Outstanding Universal Value of Welsh World Heritage Sites?
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Q11.	Will the guidance assist in the consistent management of World Heritage Sites in Wales, especially those which are located in more than one local authority area?
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G. *Managing Conservation Areas in Wales*

44. *Managing Conservation Areas in Wales* (Annex 4) is directed mainly to local planning authorities and aims to encourage a consistent approach to conservation area designation, appraisal and management throughout Wales.
45. The guidance sets out the policy context for the designation and management of conservation areas and explains the duties incumbent on local planning authorities. It also identifies key aspects of good practice for: the designation and appraisal of conservation areas, the participation of stakeholders and the development of local policies for positive management and enhancement.

Q12.	Will <i>Managing Conservation Areas in Wales</i> encourage local planning authorities to adopt a consistent approach to conservation areas across Wales? Do you have any suggestions as to how it can be improved?
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H. *Managing Lists of Historic Assets of Special Local Interest in Wales*

46. *Managing Lists of Historic Assets of Special Local Interest in Wales* (Annex 5) is aimed primarily at local planning authorities and third sector organisations. It will encourage both sectors to work together to protect and enhance historic assets of special local interest and inspire people to care about their local heritage.

47. The document sets out general principles and good practice for preparing and managing lists of local historic assets — including criteria, nomination, consultation, validation, appeals and monitoring — and gives guidance on their use in the planning system.
48. The guidance supplements the relevant sections of *Planning Policy Wales* and *Technical Advice Note 24: The Historic Environment* (currently under consultation).

Q13.	Do the general principles and advice on good practice in <i>Managing Lists of Historic Assets of Special Local Interest in Wales</i> provide sufficient guidance for local planning authorities to set up and use local lists? Do you have any suggestions as to how the guidance can be improved?
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I. *Setting of Historic Assets in Wales*

49. *Setting of Historic Assets in Wales* (Annex 6) explains what setting is, how it contributes to the significance of a historic asset and why it is important. The document also outlines the principles used to assess the potential impact of development or land management proposals on the setting of World Heritage Sites, ancient monuments (scheduled and unscheduled), listed buildings, registered historic parks and gardens and conservation areas.
50. The guidance is aimed at developers, owners, occupiers and agents. It may also be used by decision-making authorities who should consult it alongside relevant sections of *Planning Policy Wales* and *Technical Advice Note 24: The Historic Environment* (currently under consultation) to inform local policies and when considering individual applications for planning permission and listed building, scheduled monument and conservation area consent, including pre-application discussions.

Q14.	Does <i>Setting of Historic Assets in Wales</i> adequately explain why setting is important and how it should be assessed?
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Q15.	Does the guidance explain the visual and especially the non-visual components of setting sufficiently?
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Q16.	Does the guidance explain how to take the visual and non-visual components of setting into account during the assessment process? Do you have any suggestions as to how it can be improved?
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