

Historic Partnership Agreements — Regulations Regulatory Impact Assessment

1. The Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act') and the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act') provide the fundamental statutory framework for the designation, protection and management of scheduled monuments and listed buildings in Wales. Under the provisions of those Acts, authorised works to designated historic assets are regulated by written consents obtained from the Welsh Ministers or local planning authorities. The consents specify the permitted works and may be subject to particular conditions.
2. The Historic Environment (Wales) Act 2016 amended both the 1979 Act and the 1990 Act to introduce provisions for the making of heritage partnership agreements (HPAs).
3. HPAs are voluntary agreements for the medium- to long-term management of one or more designated historic assets. These statutory agreements will be able to incorporate scheduled monument and listed building consents, authorising works that have been identified and agreed by the parties to the agreement. Such consents will be particularly useful for routine works required for the conservation and management of multiple historic assets that would otherwise have necessitated successive and largely repetitive applications. HPAs will also encourage more consistent and coherent management of monuments and buildings.
4. In order to be effective, HPAs will need to be flexible so they can accommodate not only different types of sites and conservation requirements, but also different configurations of ownership, management and wider community involvement. In appropriate circumstances, HPAs will deliver benefits to both owners and consenting authorities, but they will offer little or no advantage to most owners of scheduled monuments and listed buildings who only occasionally undertake works that require consent. Consequently, it is unlikely that there will be more than 10 HPAs made in Wales in any single year.
5. The enabling legislation in the 2016 Act sets out a detailed framework for making HPAs. It also requires that regulations must be made for:
 - the consultation that must take place before an HPA is made or varied;
 - the publicity that must be given before or after an HPA is made or varied;
 - the terms that must be included in an HPA; and
 - the termination of an HPA by order by the Welsh Ministers or a local planning authority.
6. Four options have been considered whilst developing the proposals for the regulations.

Option 1 — Do nothing and continue with existing consent regimes without making regulations.

Option 2 — Make regulations that give local planning authorities and the Welsh Ministers maximum flexibility when determining the consultation and publicity, terms and termination procedures required for an HPA.

Option 3 — Make regulations that place prescriptive requirements on local planning authorities and the Welsh Ministers for the consultation and publicity, terms and termination procedures required for an HPA.

Option 4 — Combine elements of options 2 and 3 to make regulations that establish minimum requirements for consultation and publicity, permit flexibility with the terms of an HPA, and set out clear procedures for the termination of an HPA by order of the Welsh Ministers or a local planning authority.

7. Options 2, 3 and 4 would require separate sets of regulations for listed building HPAs and scheduled monument HPAs due to their derivation from distinct parent Acts. While the fundamental elements of the regulations would be similar, they might vary in detail either to reflect aspects of the parent legislation or the likely character of the relevant HPA agreements.
8. The regulatory impact assessment prepared for the Historic Environment (Wales) Act 2016 included an assessment of the options for HPAs and their costs and benefits. This regulatory impact assessment is therefore only concerned with assessing the options for the regulations and their limited costs and benefits.

Option 1 — Do nothing and continue with existing consent regimes without making regulations.

9. Option 1 would block the introduction of HPAs into Wales since they cannot be brought into effect without accompanying regulations for consultation and publicity, terms and termination procedures — all of which are left unspecified in the provisions of the 2016 Act. Current listed building and scheduled monument consent arrangements would accordingly remain unchanged. Owners undertaking programmes of repair or change to a number of historic assets would be obliged to apply for multiple individual consents.

Option 2 — Make regulations that give local planning authorities and the Welsh Ministers maximum flexibility when determining the consultation and publicity, terms and termination procedures required for an HPA.

10. Under option 2, the regulations would simply require the Welsh Ministers or local planning authorities to undertake consultation and publicity prior to making or varying an HPA, without specifying how it should be done. This would give them freedom to adopt the most appropriate consultation and publicity arrangements for an HPA after considering its character and content, its extent and those who may have an interest in the agreement. Consultation and publicity could, accordingly, vary with each HPA.

11. As framed under this option, the regulations would require an HPA to include terms, but would allow the HPA's parties to agree terms and vary them without constraint.
12. Similarly the regulations would make provision for the termination of an HPA by order of the Welsh Ministers or the local planning authority, but would not set out the procedures to follow. The regulations also would not give an owner an opportunity to make representations to an independent person on a decision to terminate an HPA.

Option 3 — Make regulations that place prescriptive requirements on local planning authorities and the Welsh Ministers for the consultation and publicity, terms and termination procedures required for an HPA.

13. The regulations envisaged under option 3 would put in place prescriptive requirements for consultation and publicity, including a notice in a newspaper, signs on site, a public meeting and making an HPA available for scrutiny in a central location in the area where the agreement will have principal effect.
14. The regulations would also set the term of the HPA. Each agreement would last 15 years, and this would not be renewable or variable by the parties to the HPA.
15. The option 3 regulations would likewise detail the procedures to follow if an HPA were to be terminated by order. These would be based on the current provisions in the 1979 and 1990 Acts pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.
16. If termination of an HPA by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

Option 4 — Combine elements of options 2 and 3 to make regulations that would establish minimum requirements for consultation and publicity, permit flexibility with the terms of an HPA, and set out clear procedures for the termination of an HPA by order of the Welsh Ministers or a local planning authority.

17. In option 4, the regulations would set out minimum requirements for consultation and publicity. For a listed building HPA, these would require, for a specified period of time, the:
 - provision of a copy of the HPA for inspection in a public place, such as a local library or council office;
 - display of a notice on the local planning authority website;
 - display of a notice on, or in the neighbourhood, of a site; and
 - publication of details on how to make representations.

18. A scheduled monument HPA would require, instead, electronic publication for a specified period of:
 - the address or location of the scheduled monument;
 - a summary of the HPA (with a full copy available on request); and
 - details on how to make representations.
19. Both regulations would also require the notification of those with an interest in the HPA. If the local planning authority or the Welsh Ministers deem that additional publicity would be beneficial, they could consider this on a case-by-case basis.
20. Under this option, the term of the HPA will be agreed by the consenting authority and the owner, and it can be shortened by their mutual consent, but it will not be possible to extend the HPA. HPA guidance will contain information on what to consider when deciding on the term of an HPA — in some instances, 5 years might be appropriate, while in others, 20 years might be a suitable duration with specific review points built into the agreement.
21. Due to the amount of work and time invested in the establishment of an HPA and the potential resources committed to an agreement, it is deemed appropriate to have specific procedures in place to terminate an HPA by order. The approach adopted in option 3 for termination would also be followed here. The provisions for opposed revocations of consents in the 1979 and 1990 Acts would again provide the basis for the regulations to govern the termination of HPAs by order. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.
22. If termination of an HPA by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

Costs

Option 1

23. Since this option continues with the existing consent regimes, there will be no costs in addition to those now incurred. Currently, there are no application fees for scheduled monument or listed building consents. However, there are invariably costs to owners in making applications. For all but the simplest works, drawings and plans need to be prepared, impact and other assessments completed and schemes of works developed. Architects, surveyors, archaeologists or other professionals often need to be employed to assist in the preparation of consent applications. The time taken to prepare an application and the costs to owners are effectively impossible to estimate since they will vary widely depending upon the scale and complexity of the works covered by the individual consents. Nevertheless, a rough indication of the cost of a routine consent may be obtained from the Canal and River Trust's calculation in 2014

that a typical listed building consent application cost the organisation £1,500¹; it is assumed that costs will have risen since that time.

24. The time taken and costs incurred by consenting authorities in processing applications can be more confidently estimated. Between April 2019 and March 2020, 86% of scheduled monument consent applications were determined by Cadw within 13 weeks of submission. It has been calculated that the processing of such an application costs Cadw £300 (based on salary levels at 1 April 2019), excluding any necessary travelling expenses.
25. Welsh local planning authorities generally determine listed building consent applications within 12 weeks from submission. Information provided by local planning authorities indicates that the cost of processing a listed building consent application varies depending upon the scale and complexity of the application and the amount of officer time required, but may range from £250 to over £1,500 (including publicity and travel costs).
26. However, the opportunity to make savings from the elimination of multiple, and often repetitive, consent applications will not be secured under option 1. The management of the scheduled monuments and listed buildings in the care of Glandŵr Cymru (Canal and River Trust in Wales) will provide an indication of the benefits that HPAs might deliver in this regard.
27. Glandŵr Cymru manages substantial numbers of designated historic assets directly associated with the operation of their waterways, such as locks, aqueducts, canal bridges, and docks. The assets of each type are often of similar age and construction and have largely similar conservation requirements.
28. To support its conservation and maintenance programmes, Glandŵr Cymru routinely secures consents for works to its designated assets. It also obtains clearances from the relevant consenting authorities for works that can proceed without the grant of formal consent. Although details of the individual consents and clearances are not available, engagement with Glandŵr Cymru during the development of the Historic Environment (Wales) Act 2016 and the draft regulations indicates that the introduction of HPAs would enable the organisation to reduce the numbers of consents and clearances required for the management of their waterways. This would be particularly true of the clearances, which could be covered by categories of works agreed in HPAs that did not need consent.
29. Similarly, the efficiency and benefits of long-term management of the historic asset through the HPA will not be available under option 1.

¹ https://historicengland.org.uk/images-books/publications/err-act-case-studies/enterprise_and_regulatory_reform_act_case_studies/

Options 2, 3 and 4

30. Both owners and consenting authorities will incur costs in preparing heritage partnership agreements arising from the requirements of the provisions in the Historic Environment (Wales) Act 2016. Those costs were analysed in the regulatory impact assessment for that legislation and that exercise will not be repeated here. Only costs arising directly from the operation of the regulations will be considered in the following impact analysis.

Option 2**Publicity / consultation**

31. The regulations would not place any additional direct costs on owners.
32. While consultation and publicity are statutory requirements, in each case all arrangements would be left to the discretion of the consenting authority. This could vary from placing a notice on the website, which would have negligible cost, to holding a public meeting in the area or placing a notice in the newspaper. The main challenge would be to ensure some consistency in how individual local planning authorities handle arrangements — advice on what would be appropriate could be included in guidance but there would be no requirement on local authorities to follow the guidance. Cost is likely to be the determining factor rather than testing the content of the HPA. It is not possible to put an actual cost against this option.

Terms

33. The ability to set the term of the HPA without any constraints could be of benefit to both the consenting authority and owner as the term could be different for each HPA depending on the assets included and the works agreed. Generally, the longer the HPA the greater the savings for the parties involved. However, if an HPA is too long, it could enshrine outmoded conservation principles and methodologies to the detriment of the historic assets covered by the agreement. The risks are similar should an HPA be extended beyond its term without due consideration given to its embodied consents or the appropriateness of the works.

Termination

34. The primary Acts require the HPA regulations to include provision for the termination of an HPA or any part thereof by order. Only in exceptional circumstances — for instance, the complete breakdown of a relationship between an owner and a consenting authority — will an order be used to terminate an HPA or some portion of it. Option 2 would enable consenting authorities to terminate HPAs or their provisions by order, but would leave the procedures for the exercise of those powers undefined in the regulations. Owners would not have any recourse against orders or be able to make compensation claims. Without such detailed regulations, owners could be financially disadvantaged and their human rights could be breached.

Option 3

Consultation and publicity

35. The regulations would not place any additional costs on owners.
36. The costs of prescriptive requirements for consultation and publicity would fall on the consenting authorities, either the Welsh Ministers or local planning authorities. Examples of the costs involved are captured below:
 - Preparation of the site notice, website, deposit of the HPA documents at a central location and notification of organisations / people with an interest in the HPA: ½ day of an officer's time.
 - Posting of the notice on site: ½ day of an officer's time due to travel, especially if the HPA covers more than one historic asset.
37. It is estimated that the cost of preparing and posting the notices would be in the region of £200, taking into account materials, time and mileage.
38. Organisation of a public meeting: the cost of this is likely to be in the region of £500 when publicity for the event, the preparation of the documents and ensuring presence at the event is fully factored in. There may also be room hire to consider if an appropriate consenting authority venue cannot be sourced.
39. Notice in a local newspaper: it is estimated that the cost of advertising can vary from £50 to £200 per advert depending on the advertisement and the local newspaper.
40. Consideration needs to be given as to whether these requirements are proportionate to the interest that there may be in an HPA. The HPA is likely to include consent for repetitive minor works and therefore consideration must be given to how many people would be interested in the newspaper advertisements or attending the public meetings. There may be better ways of targeting the people and organisations who would have constructive comments on HPAs.

Terms

41. The regulations would stipulate the term of the HPA. Each HPA, irrespective of content or appropriateness, would be 15 years in length. There could be a cost associated with this to both owner and consenting authority. In some circumstances a longer HPA might be more appropriate – while in others 15 years could be too long and have a detrimental impact on the historic assets.

Termination

42. The regulations governing the termination of HPAs by order would be based on the 1979 and 1990 Acts' provisions pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.
43. A consenting authority would have to serve notice of the proposal to terminate an HPA on the owner and other affected parties. If objections are raised, the

Welsh Ministers would have to give affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations, either at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

44. The estimated costs to the Welsh Ministers of receiving representations would be as follows:
 - public inquiry — £15,000; or
 - hearing — £5,000.
45. The estimated cost for a local planning authority to make representations would be £1,742 — based on the roughly comparable cost of participation in the planning appeal process.²
46. An owner's costs for making representations are estimated at:
 - attendance at a public inquiry — £4,800; or
 - participation in a hearing — £1,200.³
47. Termination of an HPA may, under certain circumstances, render the consenting authority liable to pay compensation. It is not possible to estimate the costs of compensation claims since they will vary from case to case. If there is any dispute over the compensation awarded, matters involving the depreciation of the value of an interest in land may be referred to and determined by the Upper Tribunal.
48. Termination by order will only happen in exceptional circumstances; it is estimated that it may only happen once in a 10-year period or even more rarely. We are not aware, for instance, of any cases of an opposed revocation of a listed building consent under the powers in section 26 of the 1990 Act. The HPA itself would include provision for termination by agreement and therefore termination by order will only be considered when all other avenues have failed. Applications for compensation will only be permitted in certain circumstances and are likely to be even rarer than terminations by order.

Option 4

Consultation and publicity

49. The minimum requirements for consultation and publicity would be set out in regulations.
50. For listed building HPAs, this would provide consistency across local planning authorities in Wales, but also allow those authorities to undertake additional publicity when appropriate.

² <https://gov.wales/sites/default/files/publications/2019-06/planning-wales-act-2015-explanatory-memorandum.pdf> paragraph 7.420

³ <https://gov.wales/sites/default/files/publications/2019-06/planning-wales-act-2015-explanatory-memorandum.pdf> paragraph 7.425

51. The minimum publicity for a listed building HPA would be:
 - Preparation of the site notice, website, deposit of the HPA documents at a central location and notification of organisations / people with an interest in the HPA: ½ day of an officer's time.
 - Posting of the notice on site: ½ day of an officer's time due to travel, especially if the HPA covers more than one historic asset.
52. It is estimated that the cost of preparing and posting the notices would be in the region of £200, taking into account materials, time and mileage.
53. Minimum publicity for a scheduled monument HPA would require the preparation of notices and their electronic publication — ½ day of an officer's time at a cost of approximately £100. There may be additional costs associated with posting copies of the draft HPA if requests are received from members of the public, but, since such requests are never likely to be numerous these will be minimal.

Terms

54. With this option, the term of the HPA would be negotiated by the consenting authority and owner and therefore they would be able to decide on the most appropriate term for the particular assets and circumstances. However, to prevent the HPA from becoming indefinite there will be no mechanism to extend the term.
55. There are no costs associated with this option.

Termination

56. Since the mechanisms for termination in option 4 mirror those in option 3, the costs outlined in paragraphs 34 – 40 will also apply here.

Benefits

Option 1

57. Since this option would bring no change to the existing scheduled monument and listed building consent regimes, it would confer no benefits.

Option 2

58. Option 2 would bring the HPA provisions contained in the Historic Environment (Wales) Act 2016 into force with minimal regulations and give owners and consenting authorities maximum flexibility when negotiating and managing HPAs.
59. The incorporation of consents for agreed works in an HPA would be likely to eliminate the need for repeated individual consent applications over the lifetime of the agreement, bringing savings in time and resources to both the owner and the consenting authority. This would also be the case in options 3 and 4.

60. The consenting authority and owner would be able to agree the most appropriate and cost-effective way to discharge the consultation and publicity requirements. Similarly, the parties to the agreement would be free to decide the term of the HPA and extend or shorten it.
61. There are no benefits to providing flexibility with regard to the termination of an HPA by order. The primary legislation requires an HPA to set out how the parties can terminate it by agreement; if termination by order is required, something has gone wrong and relations between the parties have irreparably broken down. In such circumstances, well-defined, independent procedures for the termination of the HPA by order would be particularly important to protect the rights and interests of all parties involved.
62. While the flexibility afforded the parties to HPAs under option 2 would seem to offer many benefits, the result, even with clear and carefully drafted guidance, is likely to be HPAs exhibiting wide variations in their scope and terms. Widespread and substantial inconsistencies between HPAs could easily give rise to doubts about the fundamental equity of the agreements.

Option 3

Consultation / publicity

63. As each HPA would be publicised identically, interested parties would know where to look for information on a prospective HPA. Advertisements placed in the local newspaper would alert the community to the proposed HPA. These advertisements would be supplemented by site notices, for the attention of local residents and casual passers-by, and website notices. People with an interest in the historic assets affected by the HPA would be contacted directly by the consenting authority. Draft HPA documents would be made available in a central location to make them accessible to people who wish to scrutinise the agreement in detail.
64. The local community would have an opportunity to comment on the HPA in a public meeting, including an opportunity to question the appropriateness of the proposed works at that meeting.

Terms

65. The benefit of having identical terms for every HPA, irrespective of content, is that it provides transparency and clarity. In addition it reduces the need for the consenting authority and owner to negotiate and agree on the length of the agreement.

Termination

66. Having the procedures set out in regulations should the HPA have to be terminated provides clarity and security to the owner and the consenting authority that each case would be considered fairly and independently. The procedures would be based on the current provisions in the 1979 and 1990 Acts pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.

67. If termination of an HPA by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.
68. This provides a transparent and fair process for all sides should something go wrong. It also allows compensation to be paid to the owner should it be justified by circumstances. The regulations, which set out the procedures to follow for the termination of the HPA by order, do not replace the requirement in the primary legislation for provision for the termination of the HPA by agreement.
69. Option 3 would ensure uniformity in the fundamental elements of all HPAs. While this would ensure consistency and remedy some of the issues that arose with option 2, it would remove much of the flexibility which would allow HPAs to be tailored to suit the particular character and circumstances of the historic assets being managed. This is particularly the case with regard to the term of the agreement, which ideally would be a matter of careful negotiation between the owner and the consenting authority taking into account conservation and management issues.

Option 4

Publicity / consultation

70. The regulations would set out the expected publicity for an HPA. The requirements would differ slightly for scheduled monument and listed building HPAs, but in each case the consenting authority would have the option of delivering additional publicity should they deem it beneficial. This provides the right balance between making sure that people are aware of the proposals and what is proportionate to the works proposed.
71. The publicity for a scheduled monument HPA would require electronic publication of a summary of the HPA and supply of a copy of the draft agreement to any person who requested one. This approach to publicity reflects that, because of the constraints on the scheduled monument consents that can be granted, the agreed works covered by scheduled monument HPAs are likely to be of relatively minor impact and of narrow interest. Nevertheless, the Welsh Ministers will have to inform those who have an interest in the historic assets concerned of the proposed agreement.
72. The regulations for a listed building HPA would impose a slightly wider range of publicity requirements. Placing notices on the local planning authority website and on or near the site, as well as making the documents available in the local area, would inform local communities of the proposed HPA. In addition the consenting authority would need to inform those with an interest in the HPA; these might include amenity societies, local groups or individuals who have asked to be informed of any HPA in the local area. Many of the works covered in the HPA are likely to be repetitive, relatively minor works, so these publicity requirements would balance openness and transparency with pragmatism and economy.

Terms

73. This option would allow the consenting authority and owner to agree on the most appropriate term for the HPA based on the proposed works, nature of the sites and ownership. This could vary from 5 to 20 years although we would suggest that 10 to 15 would be normal. Guidance issued by the Welsh Government would include what needs to be considered when making the decisions on terms.

Termination

74. The benefits outlined for option 3 would apply with equal force here. Defined procedures for termination by order would assist owners and consenting authorities to ensure a fair and transparent process is followed when something has gone wrong. The HPA would also include provision on how the HPA could be terminated by agreement.

Preferred option.

75. The Welsh Government is consulting on Option 4. This is the preferred option as it includes flexibility within what are voluntary agreements between consenting authorities and owners. The consultation and publicity requirements would be proportionate to the kind of works that would be included in the HPA. However, the arrangements for termination of an HPA by order would be prescriptive as this is a safety net for the owner.