

Heritage Partnership Agreements in Wales

Contents

1.	Introduction.....	4
1.1	What is a heritage partnership agreement?	4
1.2	What are the benefits of an HPA?	5
1.3	When would an HPA be appropriate?.....	5
2.	What can an HPA include?	6
2.1	Advance consent	6
2.2	Works that do not need consent.....	7
2.3	Works that need separate consent	7
2.4	Other issues	7
2.5	What an HPA does not cover.....	8
3.	Setting up an HPA.....	8
3.1	Assembling a partnership.....	8
3.2	Preparing the agreement.....	8
3.3	Developing the detailed plan.....	9
	Objectives.....	9
	Significance.....	9
	Works	10
	Impact	11
3.5	Duration — Start and finish dates	11
3.6	Notifications	11
3.7	Record-keeping.....	12
3.8	Monitoring	12
3.9	Review.....	12
3.10	Variation	12
4.	Consultation and publicity arrangements	13
4.1	Listed building HPA	13
	Consultation	13
	Publicity.....	14
4.2	Scheduled monument HPA.....	14
	Consultation	14
	Publicity.....	15
5.	Sign-off and adoption.....	15
6.	Termination	15
6.1	Termination of a listed building HPA	16

6.2 Termination of a scheduled monument HPA	17
7. Template for an Agreement	18
Introduction.....	18
The listed buildings / scheduled monuments covered by the agreement	18
Term of agreement.....	18
Detailed Plan.....	18
Notification arrangements and recording.....	18
Variations.....	18
Monitoring of works.....	19
Review	19
Termination	19
Miscellaneous	19

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1. Introduction

The historic environment is a precious resource, but it is also fragile. It must be protected so present and future generations of Welsh citizens and visitors can continue to be inspired by it, learn from it and enjoy its many benefits. The historic environment we have inherited is already the result of change over time, and further change is inevitable. That change needs to be carefully and sustainably managed if the historic environment is going to respond to the requirements of modern life and meet the challenges of the future while also keeping what makes it special.

The sustainable management of the historic environment requires an informed understanding of significance, careful handling and ideally a long-term approach. Even small changes, seemingly inconsequential in themselves, can gradually accumulate to erode and eventually obscure the historic character of a building or even an entire area.

In order to help owners and consenting authorities adopt a long-term approach to the management of designated historic assets, the Historic Environment (Wales) Act 2016 amended the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990 to establish heritage partnership agreements in Wales.

1.1 What is a heritage partnership agreement?

A heritage partnership agreement (HPA) is a voluntary arrangement for the long-term management of one or more designated historic assets. It is negotiated between the owner of the asset/s, the relevant consenting authority or authorities and any other interested parties. What sets it apart from a simple management plan is that it can incorporate listed building and/or scheduled monument consents for an agreed programme of works to be carried out during the lifetime of the HPA, which may last for as long as 10 to 15 years. It can also specify what does and does not require consent in the context of an overall conservation management plan. In addition, the agreement may also cover maintenance, and, where appropriate, arrangements associated with public access.

An HPA supports the beneficial, long-term management of historic assets by setting out agreed conservation objectives, identifying the actions needed to meet them in a planned programme of works and providing the necessary consents. An HPA provides the basis for a comprehensive and consistent approach to the management of scheduled monuments and listed buildings, whether located together on a single estate or scattered across one or more local authority areas.

If an HPA includes both scheduled monuments and listed buildings, it will, in fact, incorporate two separate and distinct legal agreements — a listed building HPA and a scheduled monument HPA. This will not have an impact on much of the agreement; for example, only one detailed plan incorporating the objectives, significance, works and impact will be required. However, due to the legislation that was required to establish HPAs in Wales, specific consultation and publicity and

termination mechanisms are applicable to the two legal agreements and will be detailed separately below.

1.2 What are the benefits of an HPA?

Although the parties to an HPA have to invest time and resources in its development, an agreement delivers many benefits.

An HPA provides a framework for genuine partnership working between the owner, the consenting authority and other interested parties. Regular communication and interaction helps to improve awareness of respective interests and concerns, and to identify solutions should those interests conflict. Working in partnership builds confidence in all parties, encourages good conservation practice, and reduces the risk of unplanned or inappropriate changes to historic assets through non-compliant works.

For the owner, the HPA provides the assurance of a long-term historic asset management plan that has received the approval of the relevant consenting authority or authorities. With consents in place for the duration of an HPA, an owner no longer needs to make recurrent and often repetitive consent applications. Rather, an owner has the flexibility to plan works to their assets over a period of time and in a way that makes best use of available resources. Since an HPA can also include agreements about works that do not require consents, an owner is able to proceed with such tasks with confidence and without encountering time-consuming delays. However, should any matters arise about the management of historic assets during the period of the plan, the owner will be able to engage constructively with the consenting authority and other parties to the agreement to find a solution to them. In short, an HPA, gives an owner a secure and flexible structure for the efficient management of designated historic assets.

A consenting authority — whether a local planning authority (LPA) for a listed building HPA or Cadw for a scheduled monument HPA — also benefits from the creation of an HPA. Over the span of an agreement, the authority will realise time and cost savings since the HPA eliminates the need for multiple individual consent applications, often for similar and minor works. The HPA also secures the positive, long-term management of the historic assets covered by the agreement with the cooperation of the owner.

During the negotiation of an HPA, the parties work together to identify the conservation objectives and the actions necessary to fulfil them as the basis of a management plan. This process ensures a consistent approach to the management of assets for the duration of the plan. It reduces the likelihood of unplanned or inappropriate changes that could lead to problems in future. The review provisions that are incorporated in an HPA ensure that its operation can be easily and regularly assessed and adjustments made if necessary.

1.3 When would an HPA be appropriate?

HPAs can make provisions for scheduled monuments and/or listed buildings. HPAs are likely to be particularly helpful in the management of:

- Large or complex sites where there are several listed buildings and/or scheduled monuments, such as a country estate, a university campus, or a former industrial site.
- Large or complex single monuments, such as large ruinous castles, abbeys or properties run as visitor attractions.
- Large or complex single buildings such as a prison, college or hospital.
- Assets of similar type that are in the same ownership but in dispersed locations, such as local authority-owned schools, libraries or bridges, or groups of associated structures, for example along the length of a canal
- Sites that contain both scheduled monuments and listed buildings and would benefit from a holistic approach to their management.

HPAs will be particularly helpful where sites have complex or recurring ongoing conservation needs associated with maintenance and periodic repair, or where there are phased programmes of renewal and refurbishment. They will work best where:

- Significant work can be anticipated in specific projects or programmes of repair such as a 10-year programme of stonework repair, or planned renewal of building elements.
- Repeated work is likely, for example where recurring repairs to road bridges, are needed.
- Specific time-limited programmes of work are planned, for example associated with bringing redundant sites back into use.

Although several site owners could be party to a single HPA, agreements are likely to be more easily achieved and maintained where sites are in single ownership and have a stable management regime.

Buildings within the curtilage of a listed building may also be brought within the scope of an HPA.¹ This may be beneficial since it will provide an opportunity to agree what constitutes curtilage and what works fall inside the ambit of the listed building consent process. A scheduled monument HPA can also include land adjoining or in the vicinity of a scheduled monument.

2. What can an HPA include?

2.1 Advance consent

At the heart of an HPA is the ability to give advance consent for specified works, which can then be implemented over an agreed period of time. This is particularly helpful for routine and recurring works where a common specification for the work can be agreed in advance. The agreement can set out conditions, and include provisions requiring the execution of the works to an agreed conservation standard.

In the case of listed buildings, the agreement can cover any works that might be granted listed building consent in the normal way.² Thus, the advance consent might include repairs that are not like-for-like (for instance, proposed changes of material or construction method) or the renewal of building elements (for example, phased window refurbishment). Alterations that lead to an enhancement in the condition of the building could also be eligible for advance consent.

For scheduled monuments, the types of work for which advance consent might be appropriate could include erosion repair, repointing failing masonry, planting, felling, and fencing.³ Works associated with visitor access, such as the installation or repair of paths, railings and signage, could also be included.

There may be scope for a greater range of works to receive advance consent where they have been defined and agreed in an existing conservation management plan.

2.2 Works that do not need consent

An agreement can also specify works that would not, in the view of the parties, need consent. In the case of listed buildings, this might be planned routine maintenance and like-for-like repairs. For scheduled monuments, it might be vegetation management. Good practice in carrying out these types of work could be set out in the agreement, for example giving clarity to the definition of like-for-like repair, or describing the method for vegetation management.

Works to scheduled monuments that are already covered by class consents⁴ (for example, the continuation of certain agricultural and horticultural activities or urgent works in the interests of health and safety) should be detailed in an HPA to provide a full picture of the management of the assets.

The agreement may also describe how basic conservation needs will be addressed through appropriate and planned routine maintenance. A simple maintenance regime is one of the most important ways in which a listed building or scheduled monument is protected for the long term, and it would therefore be good practice to include this within the scope of the agreement.

2.3 Works that need separate consent

An HPA may also provide clarity about works that will need separate consent. An HPA cannot provide consent for the demolition of all or part of a listed building; this will always require a separate listed building consent application. An LPA may also consider that the complexity or sensitivity of some works — for instance, the restoration or reconstruction of elements of a listed building, or substantial additions or alterations — render them unsuitable for an HPA.

Similarly, a scheduled monument agreement cannot grant consent for the demolition or destruction of designated historic assets. Separate scheduled monument consent would also be needed for any works that would involve flooding or tipping operations on land in, on or under which there is a scheduled monument. When considering an HPA for scheduled monuments, early engagement with Cadw will help to identify works that cannot be accommodated within its scope and will require separate consent. For example, consent applications for archaeological excavations would require detailed research strategies and justifications and would not be suited to HPAs. Any survey works, such as geophysical survey or soil sampling, require a separate Section 42 consent.⁵

2.4 Other issues

An HPA may also include agreement on other matters which are not works, and which fall outside the consents regime. For example, it could include provisions for

public access to the historic assets, or include details of management arrangements for other assets such as historic parks and gardens. These may be particularly relevant where an overarching conservation management plan has been prepared, for example in the context of a major funded programme.

2.5 What an HPA does not cover

An HPA cannot provide planning permission or conservation area consent, nor can it supply any permits or licences needed where nature conservation interests or European protected species may be affected by the proposed works.

3. Setting up an HPA

3.1 Assembling a partnership

There is no fixed application process for an HPA since it is a negotiated partnership. The key parties to any agreement are the historic asset owner(s), and the consenting authority. This means that where listed buildings are included, the LPA will be one of the parties. Where scheduled monuments are included or where the building or site owner is itself a local authority, Cadw must be a party to the agreement. It is possible to have an HPA which includes listed buildings within different local authority areas; in this circumstance, each local authority needs to be party to the agreement.

The owner can also be a person who is entitled to the tenancy of the monument or building according to a lease which has not less than 7 years remaining. An agreement may be initiated by either party, but the impetus for an HPA is most likely to come from the owner.

It may also be helpful for the partnership arrangement to include other parties with an interest in the assets covered by the agreement. These might, for example, include:

- anyone directly involved in the management of the site
- short-term leaseholders or occupiers
- other bodies that have an interest in the site, such as user groups
- organisations with specialist knowledge, such as the Welsh archaeological trusts and the national amenity societies, which may be able to offer advice
- Cadw, if the organisation is not one of the main parties to the HPA.

Even where Cadw is not a signatory to a listed building HPA, its officials may be able to offer advice during the development of the agreement. It is certainly good practice to invite their participation in initial discussions, and to make sure that Cadw is aware of all proposed agreements at an early stage. Early engagement may also expedite the formal consultation exercise that precedes the making of a HPA.

The HPA itself should include named representatives and contact details for all parties.

3.2 Preparing the agreement

Once parties have decided to enter into an HPA, they will need to agree its content, and resolve various practical matters. The site owner will normally take the lead in developing the HPA, in discussion with the LPA and/or Cadw. Owners will also

normally bear any costs associated with developing the detailed content of an HPA. For complex sites, or where complex programmes of work are anticipated, the owner may wish to involve a suitably qualified agent in the process. Costs associated with publicity and consultation will fall to the appropriate consenting authority.

3.3 Developing the detailed plan

At the heart of any HPA is its detailed plan for the conservation and management of the assets. This plan should include:

- an explanation of the objectives of the agreement
- a summary of the significance of the assets that fall within its scope
- a description of the proposed works over the duration of the plan
- an assessment of the impact of those works.

It should also set out general guiding principles, and provide detail on work programmes for maintenance, management and repair.

The heritage impact assessment process — which is already a prerequisite for listed building consent and is often required for scheduled monument consent — provides an existing methodology that will assist in the preparation of the plan. In addition to the general points made below, further guidance on the process is available in the Cadw publication: *Heritage Impact Assessment in Wales*⁶.

The preparation of the detailed plan will also help to establish whether any other preparatory work is needed, such as a condition survey or recording.

Objectives

Every HPA will need to have a clear statement of the high-level conservation and management objectives of the agreement. This will ensure that the parties to the agreement have a shared understanding of its aims, and will enable those aims to be clearly communicated to others.

Detailed conservation objectives for individual assets will be identified when defining the works that will be undertaken during the lifetime of the agreement.

Significance

A thorough understanding of a historic asset's significance is the starting point for any sound management plan. Every HPA should include a statement that addresses the collective and individual significance of the assets covered by the agreement.

The statement of significance should consider the assets together and identify any collective significance arising, for instance, from shared functions, construction techniques or designs. It should also give brief descriptions of the individual assets in the context of the whole. Focusing on the heritage values of the historic assets will help in the analysis of their significance:

- evidential value: the extent to which the physical fabric tells how and when an asset was made, how it was used and how it has changed over time
- historical value: a historic asset may illustrate a particular past way of life or be associated with a specific person or event and there may be physical evidence for these connections which it could be important to retain

- aesthetic value: the design, construction and craftsmanship of an asset, which can also include the setting and views to and from a historic asset
- communal value: an historic asset may have particular significance to people for its commemorative, symbolic or spiritual value, or for the part it has played in local cultural or public life.

Cadw's *Conservation Principles for the sustainable management of the historic environment in Wales*⁷ provides further information on heritage values.

Works

The parties to the HPA will have to agree the works that need to be undertaken during the lifetime of the agreement to achieve its objectives. A historic asset's significance should be a central consideration when formulating any plans. The works should aim to realise the greatest benefit and cause the least harm, so the significance of the asset is sustained or enhanced.

If the HPA includes planned works to a listed building that is not a private dwelling, consideration will also need to be given to access issues. The planned works will need to provide reasonable access and have the least detrimental impact on the significance of the listed building. *Heritage Impact Assessment in Wales*⁸ provides further information on access issues.

An HPA cannot give consent for the demolition of a listed building, the demolition or destruction of a scheduled monument, or tipping on or the flooding of a scheduled monument.⁹

Every HPA must provide detailed specifications for the works that will receive listed building or scheduled monument consent under the agreement. These will need to include any plans, drawings and other information required to identify the assets and to describe the works with sufficient precision to support the grant of the required consents.

Once works that are eligible for advance consent have been identified and confirmed by the consenting authority, a detailed schedule of work should be prepared, together with any accompanying information that the parties agree is needed. This might include a specification for repairs, arrangements for appropriate archaeological recording, or design guidance for signage, for example.

The consenting authority may apply conditions to the works, and, if so, arrangements for their discharge will need to be set out in the agreement. Depending on the nature of the works, details of conditions could be signed off at the outset through the supporting information attached to the agreement. In other cases, however, it may be more appropriate for details to be resolved and signed off during the course of the agreement, in advance of the relevant works being commenced. Where this is the case, the agreement will need to make provision for notifying the consenting authority in advance of commencement.

While the works that will be granted consent must be specified in detail in the HPA, all of the parties to the agreement will find it beneficial to include other works in the agreement's long-term management plan. The parties, for instance, might agree that

certain works constitute routine maintenance and consequently do not need consent. Alternatively, they might recognize some works cannot be adequately covered by the HPA and will need separate consents. Such an approach will provide clarity for both owners and consenting authorities and help owners plan the conservation of the assets in their care.

Impact

The plan will need to assess the potential impact of the planned works. It will need to show how any works will sustain or enhance the significance of a historic asset, including potential benefits and any harm. If any agreed works will have a negative impact on the significance of an asset, the measures taken to limit that impact should be explained.

If works will have an impact on access to a listed building, the agreement should make clear how the adopted approach to inclusive design has balanced any duties required by the Equality Act 2010 with the historic and architectural significance of the listed building.

The analysis of the impact should be proportionate to the significance of the asset and scale of the impact. Consented works that will occasion little change to an asset may only require a few lines or a short paragraph.

3.5 Duration — Start and finish dates

Agreement will need to be reached as to the duration of the HPA and this must be specified in the agreement itself. Timescales will vary with the nature of the assets and work covered by the agreement, but the expectation is that most HPAs will last between 10 and 15 years.

This length of time provides a reasonable period for strategic planning but also limits the risk of falling out of step with changing conservation requirements or the needs of the building or site itself. An upper time limit can also be useful to ensure that any changes to the personnel involved during the lifetime of the agreement can be managed effectively without detrimentally affecting the standards of the HPA. Parties may choose to identify a shorter or longer timescale depending on the needs of the building or site to which the agreement relates. For example longer-term plans may be required to accommodate changes brought about by climate change; conversely, shorter timescales might be appropriate where the HPA supports the delivery of a specific funded project.

The duration of the HPA can be shortened during the term of the agreement but cannot be extended.

3.6 Notifications

There is no legal requirement to notify the consenting authority of the start or completion of works. However, notification may be needed to enable conditions to be discharged. Parties may also elect to establish arrangements for notification, as part of any monitoring plan. This may be particularly relevant where more complex works are involved. Any arrangements for notification should be included in the HPA and should clearly state what is expected of owners and the type of response expected from the consenting authority.

3.7 Record-keeping

A record (written or photographic) is a useful benchmark against which programmes of work can be measured. Recording the elements of work as they are undertaken may also be helpful when it comes to monitoring and reviewing the progress of the HPA. Recording is likely to be set as a condition of consent.

Where arrangements for recording are included in the HPA, they should clearly set out who will carry out the recording work, the type of recording (written, photographic, drawings) that is required and at what stage in the course of the works it will be undertaken. The HPA should also state which party to the HPA will have responsibility for keeping these records. It could also be useful to include a template log sheet in the HPA to ensure consistency of information provided.

As a minimum requirement, a photographic record should be made before the start of any works and submitted to the consenting authority. The level of recording must be proportionate to the type of works being carried out and should not be a more onerous task than is required for a listed building or scheduled monument consent application. For example, if a number of windows of the same type are being repaired it would only be necessary to record one window. Any records should be retained and deposited in the appropriate historic environment record as they would for other consent applications.

3.8 Monitoring

Monitoring of works undertaken as part of the HPA can be a useful management tool and will also inform the review of an HPA, which is a legal requirement. The detail of any monitoring arrangement will be determined by the complexity or sensitivity of the works, and the agreement should therefore define a minimum level of monitoring required and clearly identify who will undertake the monitoring.

The HPA could also specify any works that do not need to be monitored. It is likely that these will be works of a minor nature which could be subject to a recording condition. This will ensure that the works can be examined at the review stage.

3.9 Review

The HPA must set out the arrangements for the review of the agreement.

Review meetings should be attended by all parties but their frequency will depend on the length of the agreement and scope of the works. A five-year agreement, for example, may include a requirement to hold an annual review.

The review process may be a useful way to consider whether any variations are likely to occur over the coming review period.

3.10 Variation

The HPA should set out how the parties can make variations or additions to the agreement during its term.

If an HPA is varied to include one or more additional scheduled monuments or to permit works that would affect the character of a listed building as a building of

special architectural or historic interest, the relevant publicity and consultation requirements described in section 4 below will need to be met.

The HPA should explain how other changes, for example to specifications or conditions, will be agreed. It may be appropriate to agree minor changes by exchange of emails.

4. Consultation and publicity arrangements

Since it is expected that most HPAs will last for a decade or more, specific consultation and publicity arrangements have been put in place that aim to strike a reasonable balance between providing adequate accountability and transparency for these far-reaching agreements and retaining sufficient flexibility to accommodate the diversity of assets and circumstances that may be encompassed within them.

The same consultation and publicity arrangements also need to be followed when:

- a listed building HPA is varied to grant or vary a listed building consent for works that would affect the character of a listed building as a building of special architectural or historic interest
- a scheduled monument HPA is varied to include one or more additional scheduled monuments.

Because they are derived from existing mechanisms for listed building and scheduled monument consents, the consultation and publicity arrangements for listed building and scheduled monument HPAs differ and are detailed separately below.

4.1 Listed building HPA

Consultation

Once the parties to an HPA have negotiated a draft agreement or a variation, limited formal consultation must be undertaken by the one or more LPAs involved in the HPA.

One LPA party to the HPA must send the draft agreement or variation to the Welsh Ministers — in practice Cadw — and give at least 21 days for consideration of the documents and the return of representations. If more time is needed, Cadw must notify the LPA before the expiration of the 21 days.

In addition, each LPA must send full copies of the draft agreement or variation to any long-term residents of buildings affected by the HPA within their authority area who are not parties to the agreement. These residents must be allowed at least 21 days to make any representations. A long-term resident is anyone who holds a tenancy of two years or more. Full consultation, which could involve the provision of long and complicated documents, would not be required with, for instance, occupants of student halls of residence or other temporary tenants of buildings subject to HPAs; such residents would, however, be able to offer their views on a draft agreement through the publicity mechanism.

Publicity

The publicity that must precede the making or variation of an HPA may be undertaken simultaneously with consultations described above. If more than one LPA is party to an HPA, each LPA must fulfil the following publicity requirements.

An LPA must make the full draft HPA or variation available for public inspection at reasonable hours in a place in the locality of the assets covered by the agreement. This could typically be in the local authority's office or a public library. The documents must be accessible for at least 21 days with accompanying directions provided about how and by when any representations regarding the HPA must be made.

The LPA must also prepare a notice including:

- the address or location of the listed building or buildings concerned
- a summary of the draft agreement or variation
- details of where and when the full draft documents are available for public inspection
- instructions on how to make representations and the deadline for their receipt.

This notice must be mounted on the authority's website for at least 21 days and printed copies must be displayed on or relatively near the listed building or buildings for the same period. The LPA must also give the notice to anyone who is not party to the HPA who may appear to have special knowledge of, or interest in, the particular buildings involved, or in buildings of architectural or historic interest more generally. The national amenity societies, the Welsh archaeological trusts and local civic and historical groups would be natural recipients for notices of draft HPAs. To avoid duplication and waste, the HPA regulations do not require LPAs to display notices or give them to interested parties if another LPA has already done so.

If an HPA involves listed buildings in the ownership of an LPA, the authority itself must make the appropriate publicity arrangements, but Cadw is responsible for informing anyone who may have special knowledge of, or interest in, the assets included in the HPA.

4.2 Scheduled monument HPA

Since Cadw is the consenting authority in matters relating to scheduled monuments in Wales, it is responsible for the consultation and publicity that must precede the making or variation of a scheduled monument HPA. Variation of a scheduled monument HPA involves the addition of one or more scheduled monuments to the agreement with associated consented works.

Consultation

Cadw must consult individuals and authorities with an immediate interest in the management and conservation of a scheduled monument or associated land that will be affected by a draft HPA or variation:

- the owner
- any occupier
- any local authority in whose area the scheduled monument or land is located

- any local authority that is a guardian of the scheduled monument or land by virtue of sections 12 or 15 of the Ancient Monuments and Archaeological Areas Act 1979.

Cadw must send each of them a complete copy of the draft document and allow at least 21 days for them to make representations.

Publicity

A scheduled monument HPA may provide consents for repair works to scheduled road bridges across an entire local authority area or a consent for new fencing or planting within a single scheduled area. The publicity arrangements must accordingly be flexible enough to accommodate such different circumstances.

Just as with listed building HPAs, the publicity for scheduled monument HPAs may proceed simultaneously with the consultation process.

Cadw must publish a notice on its website for at least 21 days that contains the following information:

- the address or location of the scheduled monument/s or land concerned
- a summary of the draft document
- instructions on how to make representations and when they must be received
- information about to request a copy of the draft agreement or variation.

Cadw will also give the notice to anyone who is not party to the HPA who may have an interest in the draft agreement or variation. This may include the Royal Commission on the Ancient and Historical Monuments of Wales, the Welsh archaeological trusts and the national amenity societies.

5. Sign-off and adoption

In response to consultation and publicity, it may be necessary to modify the HPA or variation, with the agreement of all parties. The HPA may then be signed off by all parties, and adopted by the consenting authority, according to normal governance arrangements.

A list of current listed building HPAs must be kept up to date on an LPA's website. An LPA must also submit a copy of a new agreement or variation to Cadw.

Cadw must publish a list of scheduled monument HPAs on their website.

6. Termination

An HPA can be terminated:

- due to a change in ownership
- under the terms of the agreement
- by order of an LPA or the Welsh Ministers.

An HPA cannot impose any obligation or liability or confer any right on a person who is not a party to the agreement. Unless all parties agree to continue an agreement with a new owner, an HPA will cease to have effect with a change of ownership.

Every HPA must make provision for its termination by the agreement of the parties. If, therefore, due to a change in circumstances or for other reasons, the parties decide that an HPA is no longer serving their interests, they should bring it to an amicable end by invoking an agreed mechanism for its conclusion.

In rare cases, it may also be necessary to terminate an HPA where works have extended beyond the scope of the agreement or have not been carried out to an agreed standard or specification. The HPA should make provision for such eventualities. In these circumstances, the consenting authority should consider whether the works have extended beyond the scope of the HPA to such an extent that formal enforcement or prosecution is necessary.

The consenting authorities may also terminate HPAs, or individual provisions, by order. It is envisaged that termination by order will only happen in exceptional circumstances and outside those specified in the HPA and its arrangements for termination. Such a situation may arise, for example, where significant discoveries are made following excavation, necessitating the withdrawal of consent or cessation of works against the wishes of the owner.

6.1 Termination of a listed building HPA

A listed building HPA, or a part thereof, may be terminated by order either by an LPA that is party to the agreement or by the Welsh Ministers. Sections 23, 24 and 26 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which treat the revocation and modification of listed building consent by order, have provided the framework for the process.

An LPA that is party to an HPA may terminate the agreement, or a portion of it, by order, provided that it has regard to any material considerations and it is not the owner of the listed building to which the agreement relates. An LPA's termination order will only take effect once it has been confirmed by the Welsh Ministers.

Once the LPA has made a termination order and submitted it to the Welsh Ministers for confirmation, it must also serve notice on:

- the parties to the agreement
- any resident of a building affected by the HPA with a tenancy of more than two years who is not a party to the agreement
- any other person who will be affected by the order.

The notice must give recipients at least 28 days to request a hearing before a person appointed by the Welsh Ministers. That appointed person must hear the individual who made the request as well as any LPA party to the HPA. Once the Welsh Ministers have considered all representations, they may confirm the order as made by the LPA or make it with such modifications as they deem expedient.

If the Welsh Ministers decide to terminate a listed building HPA, or a part of one, by order, the procedure will be slightly different. The Welsh Ministers will need to serve notice on the individuals specified above before making the termination order, but the arrangements for making representations will be the same. After giving regard to

all representations and any material considerations, the Welsh Ministers may make the termination order.

A person with an interest in a building affected by a termination order made by an LPA or the Welsh Ministers, may be able to claim compensation if the order renders works abortive or otherwise causes loss or damage. Any claim must be made in writing within six months of the date on which the works ceased to be authorised. It must be submitted to the LPA that made the order or, in the case of an order made by the Welsh Ministers, to the LPA for the building's locality.

6.2 Termination of a scheduled monument HPA

Only the Welsh Ministers may terminate a scheduled monument HPA, or any part of an agreement, by order. The process is derived from the provisions in the Ancient Monuments and Archaeological Areas Act 1979 for revoking scheduled monument consent by direction¹⁰. Before making a termination order, the Welsh Ministers must serve on the other parties to the HPA and any other person whom they consider to have an interest in the agreement a notice of proposed termination. That notice must include:

- a draft of the termination order
- the reasons for the proposed termination
- instructions how objections can be made to the Welsh Ministers within 28 days from the service of the notices.

Service of a notice of proposed termination also suspends any scheduled monument consent granted by the HPA, thereby requiring the immediate halt of any works that had been authorised.

If any objections are made to the notice of proposed termination, the Welsh Ministers must either hold a public local inquiry or appoint a person to receive representations from the person making the objection and other interested parties at a hearing. Before issuing a termination order, the Welsh Ministers must consider any objections that have not been withdrawn and any report prepared by the person appointed to receive representations.

If the Welsh Ministers proceed to terminate the HPA by order, they must send a copy of that order to each person served with a copy of the proposed termination and to any other persons who made representations. Thereafter, any suspended works will only be able to resume if new scheduled monument consent is secured. Should the Welsh Ministers decide not to terminate the HPA, once they issue notice to that effect, the agreement's consents will revive.

A person with an interest in a monument affected by a termination order made by the Welsh Ministers, may be able to claim compensation if the order renders works abortive or otherwise causes loss or damage. A written compensation claim must be submitted within six months from the date on which works ceased to be authorised.

7. Template for an Agreement

Introduction

Date of signing and details of the parties to the agreement

The listed buildings / scheduled monuments covered by the agreement

The HPA should identify in writing the buildings / monuments and their reference numbers covered by the agreement and include maps for clarity. The grading of individual historic assets should also be included. Curtilage structures covered by the HPA should also be identified.

Term of agreement

The start and finish date of the HPA should be specified.

Detailed plan

This section will include:

- Objectives
 - A statement of the agreement's conservation and management aims
- Significance
 - An assessment of the collective significance of the assets included in the HPA.
 - Brief summaries of the significance of individual assets.
- Works
 - Works granted listed building or scheduled monument consent
 - Detailed specifications
 - Conditions that may apply to the works, and arrangements for their discharge
 - Works not covered by the agreement and needing separate consent
 - Works that wouldn't need consent such as routine maintenance
 - Detailed specifications?
- Impact
 - Assess the potential impact of the works on the significance of the asset

Notification arrangements and recording

Arrangements to notify the consenting authority of the start or completion of works should be detailed and all requirements for the recording of works should be clearly set out.

Variations

Minor variations to HPAs can be agreed between the parties, and this section of the agreement should explain how they will be handled. It may be appropriate to agree smaller changes by email (although a clear written record must be kept), while more substantial variations to specifications or conditions may require consideration at regular review meetings. If the parties to an existing HPA propose to add one or more scheduled monuments to an agreement or to grant or vary listed building consent for works that would affect the character of a listed building as a building of special architectural or historic interest, the full consultation and publicity requirements detailed in section 4 must be fulfilled.

Monitoring of works

Any arrangements for monitoring of works should be detailed in the HPA. The specifics of any monitoring will depend on the complexity and sensitivity of the works

Review

The HPA must set out the arrangements for reviewing the agreement including the frequency of the meetings.

Termination

The HPA must contain provision for termination by the parties. The HPA must set out the procedure to follow should the parties agree to terminate the HPA.

Miscellaneous

The HPA may also include agreement on other issues which are not subject to listed building consent or scheduled monument consent, including

- Provisions for the maintenance and preservation of the listed building or scheduled monument;
- Provision for public access to the listed building or scheduled monument and the provision to the public of associated facilities, information or services;
- Restriction of access to, or use of, the listed building or scheduled monument;
- Prohibitions on the doing of any specified thing in relation to the listed building or scheduled monument;
- Provision for a local planning authority or Welsh Ministers to make payments of specified amounts and on specified terms (a) for, or towards, the costs of any works provided for under the agreement (b) in consideration of any restrictions, prohibition or obligation accepted by any party to the agreement,.

¹ For further information on curtilage structures, see *Managing Change to Listed Buildings in Wales*, Welsh Government, Cadw, 2017, p. 15

<https://cadw.gov.wales/sites/default/files/2019-05/20170531Managing%20Change%20to%20Listed%20Buildings%20in%20Wales%2024303%20EN.pdf>

² Works for the demolition of a listed building cannot be included in an HPA and must be covered by a separate listed building consent.

³ An HPA cannot provide consents for works that would involve the demolition or destruction of, or any damage to, a scheduled monument or any flooding or tipping operations on land in, on or under which there is a scheduled monument.

⁴ Ancient Monuments (Class Consents) Order 1994 (SI 1994/1381)

⁵ Section 42 of the Ancient Monument and Archaeological Areas Act 1979;

<https://cadw.gov.wales/advice-support/historic-assets/scheduled-monuments/archaeological-investigations#section-survey>

⁶ [https://cadw.gov.wales/sites/default/files/2019-](https://cadw.gov.wales/sites/default/files/2019-05/20170531Heritage%20Impact%20Assessment%20in%20Wales%2026917%20EN.pdf)

[05/20170531Heritage%20Impact%20Assessment%20in%20Wales%2026917%20EN.pdf](https://cadw.gov.wales/sites/default/files/2019-05/20170531Heritage%20Impact%20Assessment%20in%20Wales%2026917%20EN.pdf)

⁷ https://cadw.gov.wales/sites/default/files/2019-05/Conservation_Principles%20for%20the%20sustainable%20managment%20fo%20the%20historic%20environment%20of%20Wales.pdf

⁸ <https://cadw.gov.wales/sites/default/files/2019-05/20170531Heritage%20Impact%20Assessment%20in%20Wales%2026917%20EN.pdf>

⁹ Section 26L(6) of the Planning(Listed Buildings and Conservation Areas) Act 1990; Section 9ZA(3) of the Ancient Monument and Archaeological Areas Act 1979.

¹⁰ Ancient Monuments and Archaeological Areas Act 1979 Schedule 1 Part II Modification and Revocation of Scheduled Monument Consent.