



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Historic Environment (Wales) Bill: summary integrated impact assessment

An assessment of how the Historic Environment (Wales) Bill will impact on a number of areas.

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## Introduction

The Historic Environment (Wales) Bill is part of a wider programme to improve the accessibility of Welsh law, and will be the first building block towards creating Codes of Welsh Law. The Law Commission of England and Wales ([The Form and Accessibility of the Law Applicable in Wales](#)) whose remit is to improve the accessibility of the law, identified that historic environment legislation would benefit from consolidation. Stakeholders have also expressed a strong wish for clearer legislation, which is available in one place ([Historic Environment \(Wales\) Bill 2015 consultation](#)).

## Well-being of Future Generations (Wales) Act 2015

The Bill will contribute towards delivering the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015. Although there is no policy change when consolidating legislation, it will contribute, both directly and indirectly, to themes such as supporting prosperity, creating a more equal Wales, and becoming a country that promotes culture, heritage and the Welsh language. Most of the legislation is currently only available in English. The new legislation will be fully bilingual giving greater prominence and importance to the Welsh language and to the historic environment more generally.

## Scope of consolidation

The current legal framework for the protection and management of the historic environment is mainly contained in:

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- The Historic Buildings and Ancient Monuments Act 1953
- The Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”)
- The Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”)
- The Historic Environment (Wales) Act 2016 (“the 2016 Act”).

The consolidation bill will bring these provisions together into one place. The Bill will also restate provisions currently found in other Acts relevant to the historic environment, where to do so will improve accessibility and clarity. For example, some provisions from the Local Government Act 1972, the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

The **Standing Orders of the Welsh Parliament** set out the requirements for what can be included within a consolidation bill. Such a Bill cannot include policy reform and the consolidated law should have the same legal effect as the original legislation. In preparing this impact assessment we have therefore considered the impact of consolidating the legislation rather than the policy contained in the legislation.

## Why are we consolidating?

Concerns have been raised for many years about the complexity of the law in the United Kingdom and the disorganised state of its vast and sprawling statute book.

Historic environment legislation affects private individuals and public bodies alike. There are currently over 4,200 scheduled monuments, over 30,000 listed buildings and 500 conservation areas in Wales. The 1979 and 1990 Acts control the designation, protection and regular management of these historic assets. Since the Acts require formal consents for many works to historic assets and unauthorised works constitute criminal offences, the pertinent statutes in each

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Act are routinely referenced and invoked by owners, agents and consenting authorities.

Both the 1979 Act and the 1990 Act were enacted before devolution, so they are increasingly out of step with current administrative and governmental structures. The language used in the Act is outdated, cumbersome and, in some instances, incomprehensible. The 1979 Act applies to England, Scotland and Wales and now, 40 years after its passage, has been amended extensively and by all three nations. The 1990 Act only applies to England and Wales, but it, too, has been widely amended as historic environment policy in England and Wales has diverged.

The result is a body of law that is difficult to determine what is in force and where. It is a confusing and impenetrable piece of legislation which, even legal professionals, find a challenge to navigate and understand.

There was cross-party support that the legislation should be consolidated during the scrutiny of the Bill which became the 2016 Act and the Senedd criticised the Welsh Government for not consolidating the legislation at the same time as undertaking reforms. Similarly, stakeholders expressed regret that the opportunity for consolidation had not been taken during the passage of the 2016 Act.

## The benefits of consolidation

Generally improving accessibility to the law will benefit the public and private sectors, as well as citizens. It will improve the effective use of the law and will promote greater confidence in it and will lead to more efficient decision-making.

Consolidating legislation will result in law that is focused, consistent, clear and accessible. Wales will become the first UK nation to have a single Act for the

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historic environment, which will support the sustainable management of its unique historic environment.

With this coherent and comprehensible body of law available for the first time in both the Welsh and English language, public bodies, legal practitioners and citizens will be able to protect and manage the historic environment effectively so that it can continue to contribute to the well-being of Wales and its people. Historic environment legislation deals with people's property and legislation places constraints on what they can do with it. There are a number of criminal offences in the legislation and it is important that the primary legislation is clear and accessible so that people understand their responsibilities.

## **Progress of the integrated impact assessment**

An initial meeting was held in 2019 between Cadw, the Legislative Codes Office and Welsh Government officials leading on impact assessments to establish the approach to preparing IIA the historic environment Bill and consolidation bills more generally. This considered what the impact assessment for consolidated legislation (rather than reform bills) should address. An initial draft was prepared at this time, but the Covid-19 pandemic meant that further work was paused as staff were diverted to emergency support duties. In late 2020, the scope of the IIA and areas where additional evidence or which required further work were identified.

The preparation of the IIA has been an iterative process as the project has progressed and a better understanding of how the Bill will be structured has developed. Some of the assumptions made to inform the IIA have been tested with colleagues within Cadw, legal services and lawyers drafting the Bill. In addition Cadw established a small expert group to assist with the project. The group comprised of local planning authority conservation and planning officers and members of professional heritage sector bodies representing owners,

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private practice, and others with a good knowledge of the current legislation. The group has been useful in providing examples of how the current legislation works in practice and how it can be made clearer or more accurate.

## Impact

Different methods have been used to understand the impact of the Bill. Cadw has an excellent network of partners and wider communication channels in place to support engagement.

A regular update has been sent to individuals and organisations in the historic environment sector as provisions have been drafted to ensure that they are aware in the early stages of how they might be affected. The subscribers to this update represent a wide range of groups who have an interest in the historic environment and not just those that work directly in or with it.

Colleagues within Cadw, that deal regularly with the 1979 and 1990 Acts, have been updated on the progress of the Bill and its new provisions. They have been given the opportunity to highlight any issues that arise that may have an impact in practice for officials, owners and occupiers of historic assets, or their advocates.

An expert group comprising specialists from the historic environment sector, have been consulted on specific aspects of the provisions to understand how they work in practice to ensure that we have understood the consequences of the new drafting of the legislation and to ensure the existing legal effect will be maintained. As the drafting of the consolidated legislation progressed, the new structure, terminology and parts of the emerging legislation have been shared with the expert group for early feedback. The group have found that the new drafting is much more accessible and clear.

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Our current partners in the sector such as the Historic Environment Group and Built Heritage Forum have also been kept informed of the Bill's development. These groups will be vital as we move to the implementation phase.

The Historic Environment Group comprises representatives from a range of heritage bodies and associated organisations such as local authorities, National Park authorities, Natural Resources Wales, Wales Council for Voluntary Action, Welsh archaeological trusts, museums and libraries, the National Trust and the Welsh Local Government Association

The Built Heritage Forum comprises representatives from local authorities, National Park authorities, The Royal Commission on the Ancient and Historical Monuments of Wales, national amenity societies and the Church in Wales

It is clear that the implementation period for the Bill will be key, and that ongoing engagement with a range of organisations will be required (if passed by the Senedd). This will include public bodies, such as local planning authorities who will deal with the legislation daily. However a number of other organisations within the heritage sector and beyond will require different degrees of engagement and support. More direct engagement will be needed for professional bodies, for example, architects and planners while others such as estate agents will need only basic awareness raising. Although the impact and effect of the legislation will remain unchanged owners of listed buildings and scheduled monuments will also need to be aware of the change in legislation in Wales. We will continue to work with representative organisations to reach this audience.

## Costs

A regulatory impact assessment is not required for consolidation Bills, as the effect of the legislation should not change and therefore there should be no

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significant additional costs associated with its operation (to the Welsh Government or others). If the provisions of a Bill result in significant expenditure then it will not be able to be introduced as a consolidation Bill and would need to follow reform Bill procedures instead.

The exact monetary costs associated with inaccessible law are unknown. Improving accessibility is, though, likely to reduce the time and resource needed to research and apply law; not only for lawyers in practice or working in-house in the public and private sectors but also for businesses and citizens who may find it impossible – or at least disproportionately expensive – to access the law directly.

There are some minimal transitional costs associated with this consolidation. They arise primarily from the time and resources needed to update guidance, forms and websites as well the need to provide familiarisation workshops. More information is available in the Explanatory Memorandum to the Bill.

A competition filter test has been completed, the provisions are not expected to impact on competition in Wales or the competitiveness of Welsh businesses.

## Conclusion

This impact assessment has not identified any areas of the population of Wales that will be negatively impacted in a significant way by consolidating Wales' historic environment legislation. The Bill will restate the current legislation, without changing the policy. The management regimes for designated historic assets and their associated consent processes will not change. For example, the same processes and procedures will be in place for owners and occupiers of scheduled monuments or listed buildings who wish to undertake works to them. However, owners and occupiers will need to be aware of the new legislation to make correct applications for works.

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There will be transitional impacts to the relevant consenting authorities and heritage sector bodies involved with the consent application process. Cadw will provide information to familiarise organisations with the legislation and will continue to work with representatives from local authorities during the implementation period to ensure that they are aware of the new legislation and can prepare for the work that they need to do on their websites, forms and guidance. Cadw will provide templates and information sheets to assist with this.

As consolidation is not an opportunity to develop new policies, no formal consultation is required. A number of heritage sector organisations and individuals have been involved in the progress of the consolidated Bill in order to ensure that the effect of the new legislation remains unchanged and that it continues to work in practice for those applying it.

## **What are the most significant impacts, positive and negative?**

The most significant impact of consolidating Wales' historic environment legislation will be on the Welsh language. Currently the primary legislation is only available in English. Bilingual legislation provides users the opportunity and choice of which version of the law they wish to use.

The Bill will enhance the use of Welsh as a language of law and ensure that both Welsh and English are treated equally in legislation. It will make Welsh legislation more widely accessible. Public bodies, such as local and National Park authorities as well as legal and heritage sector professionals will be able to use legislation in both languages in the knowledge that terminology and meaning are consistent.

The consolidated Bill will help to promote the use of the Welsh language and assist Welsh speakers in using this legal resource in their chosen language. It will ensure that those who wish to use the Welsh language are not at a

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disadvantage. It is also the first time that the technical language used in the 1979 and 1990 Acts has been analysed and translated in such detail ensuring that Welsh and English versions use consistent terminology.

Because the effect of the legislation remains the same, there are unlikely to be any other significant impacts either positive or negative. The legislation itself will be easier to understand, and where possible will use everyday language. There could be some issues with accessing the legislation as it will only be available online. However, not many people currently refer to hard copy of the legislation, especially as they have been amended so heavily. But the availability may impact some people with poor, or no, internet access. However, those that advocate for others will find it easier to find and understand the new legislation which should assist with advising people more efficiently and appropriately.

There will be shorter-term impacts on businesses and organisations that use this legislation. Estate agents, solicitors and advocacy groups, for example, will need to familiarise themselves with the new provisions but there will be no change in policy. As such, Cadw will be able to provide much of the information needed to ensure their websites and other materials are up to date. In the longer term, accessibility to legislation in one place that is easy to find and understand should provide them with the tools required. It is likely that this will reduce some of the time and resources they spend to research information that they need.

## **How will the proposal maximise contribution to our well-being objectives and the seven well-being goals and avoid, reduce or mitigate any negative impacts?**

Consolidating Wales' historic environment legislation actively contributes to the Welsh Government's goal 'a Wales of vibrant culture and thriving Welsh language'.

Consolidation will contribute to promoting the heritage and cultural well-being of

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Wales as this will be the first time that historic environment legislation will be available bilingually, in modern form, and in one place. This has symbolic significance in terms of highlighting the growing confidence of a devolved nation.

There are clear links with the requirement to 'facilitate use of the Welsh language' as a language of law and the Welsh Government's strategy for the Welsh language 'Cymraeg 2050: A million Welsh speakers' as consolidation will be a step forward in treating both languages equally in Welsh law. It will simplify the way the law is presented and the accessibility of it online will be a way to increase the use of Welsh language materials. The language and terminology will be modern and easier to understand and, for the first time, will be consistent with historic environment legislation in English. This will be vital to ensure that owners, occupiers and practitioners alike will be using consistent vocabulary in this area of the law.

The Welsh Government has already developed a bilingual website called Cyfraith Cymru/ Law Wales to provide commentary and explanations about Welsh law. This can be used as a gateway to access up to date information about the consolidated historic environment legislation.

By ensuring that the legislation is available in Welsh, legal services and access for the public will be enhanced. It will be easier for advisory bodies and public bodies to provide advice and services through the medium of Welsh. The Welsh Government will need to ensure that this service is promoted by using links from, for example, the Cadw website which is likely to be the first port of call for advice on the historic environment. Cadw will also be able to circulate relevant information through the Historic Environment Group and other fora that it has membership of as well as it's regular historic environment mail update which has over 7,000 subscribers.

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## How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

The programme to improve the accessibility of Welsh law will be monitored more widely by the Legislative Programme Board and the Cabinet Standing Committee on the Legislative Programme. As part of this process the use of the Cyfraith Cymru/ Law Wales website will be monitored. This will provide a basis from which the implementation of the Historic Environment (Wales) Act can be assessed more specifically. There will be a need to review guidance and website materials which may provide an opportunity to promote the legislation and consult on the revised materials where required.

As the effect of the legislation will remain the same, it is difficult to evaluate the direct impact of the new legislation. However, feedback will be gathered on whether people believe that the legislation is clearer, more accessible and easier to understand. As part of the implementation plan we will also collate a lessons learned exercise so that teams working on other consolidation bills can learn from our experience.

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