

National Assembly for Wales
Bill Summary

Historic Environment (Wales) Bill

June 2015

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Historic Environment (Wales) Bill

1. Introduction

Introduction date: 1 May 2015

Member in charge: Ken Skates AM, Deputy Minister for Culture, Sport and Tourism.

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equalities and Local Government Committee

Stage 1 reporting deadline: 9 October 2015.

2. Policy Context

In its *Programme for Government*, the Welsh Government identified a Historic Environment Bill, supported by policy development and public engagement, as a key means to “enrich the lives of individuals and communities through culture and heritage”. In 2013 the Welsh Government consulted on its proposals for legislation and policy relating to the historic environment. This consultation, *The Future of Our Past*, received 177 responses from across the historic environment sector.

Some of the consultation responses expressed frustration at the low number of successful prosecutions for unlawful damage to scheduled ancient monuments in Wales. Consequently, an additional six-week consultation in spring 2014 sought views on a proposal for amendments to the *Ancient Monuments and Archaeological Areas Act 1979* that would make it more difficult for a person accused of such damage to employ a defence of ignorance of the monument’s status or location. Subsequently, the then Minister for Culture and Sport (John Griffiths AM) stated:

The results of these two consultations have shaped the Historic Environment Bill’s proposals, which will contribute to three principal outcomes:

- more effective protection for listed buildings and scheduled ancient monuments;
- improved mechanisms for the sustainable management of the historic environment; and
- greater transparency and accountability in decisions taken on the historic environment.

In September 2014, Ken Skates AM became Deputy Minister for Culture, Sport and Tourism – with the historic environment included within his portfolio. The [*Historic Environment \(Wales\) Bill*](#) was introduced to the Assembly on 1 May 2015.

2.1. *Effectiveness of existing legislation and need for the Bill*

In their responses to the Welsh Government’s consultation, stakeholders including the National Trust and WLGA noted that a number of problems with the current management of Welsh heritage were down to a **shortage of funding** rather than necessarily problems with the law. The National Trust suggested that if the sector was “properly resourced”:

The existing system would deliver greater real benefits if this resource was in place alongside good management, supplemented with good technical advice on the ground.

[The Welsh Government’s summary report responding to the 2013 consultation](#) noted that consultees were particularly concerned that “**local authorities are already at capacity coping with their current core duties**, and are faced with greater social, educational and job creation priorities”.

In its response to the Welsh Government's consultation, the Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) accused the Welsh Government of an "**absence of radical or innovative thinking**" in its legislative and policy proposals for the heritage sector. It said:

Many of the proposals are to be welcomed. However, overall we feel a generational opportunity has been missed.

Opportunities have not been explored for more creative solutions, for example to the critical neglect of so many historic buildings at the hearts of our communities. This absence of radical or innovative thinking adds to a concern about the expectation in the document that the changes proposed will result in strong leadership over a comprehensive central programme for heritage.

Many of the proposals require more resources at a time when they are decreasing.

The primary piece of legislation governing the protection of ancient monuments in Wales is the *Ancient Monuments and Archaeological Areas Act 1979*. Under the 1979 Act the Welsh Ministers are required to compile and maintain a schedule of monuments ("the Schedule") that meet certain published criteria and that they deem to be of national importance. Once designated, scheduled monuments are subject to a consent regime under which owners must obtain formal authorisation for specified works.

The 1979 Act does not allow the Welsh Ministers to put an immediate halt to unauthorised works to a scheduled monument, leaving a court injunction as the only available mechanism. The EM notes, however, that in "almost all" of the 119 instances of damage to scheduled monuments recorded in Wales between 2006 and 2012, the Welsh Ministers were able to use informal contacts to stop unauthorised works and secure necessary repairs.

3. The Bill

The majority of the Bill seeks to amend the existing legislation governing the management of the historic environment in Wales. This consists of two pieces of UK legislation:

The ***Ancient Monuments and Archaeological Areas Act 1979*** ('the 1979 Act') (which applies to England, Wales and Scotland) provides for the designation and protection of scheduled monuments of national importance by the Welsh Ministers, and makes it an offence to damage a scheduled monument or undertake works without the Welsh Ministers' formal consent. There are currently over **4,000 scheduled monuments** in Wales.

The ***Planning (Listed Buildings and Conservation Areas) Act 1990*** ('the 1990 Act') (which applies to England and Wales) gives the Welsh Ministers powers to designate listed buildings of special architectural or historic interest. It also sets out a consent procedure for permitted works to listed buildings, establishes offences for unauthorised works and provides mechanisms for enforcement actions. In addition, the 1990 Act places a responsibility on local planning authorities (LPAs) to designate areas of special architectural or historic interest as 'conservation areas' and periodically review them. Nearly **30,000 Welsh buildings** have been listed and LPAs have designated **523 conservation areas**.

Other elements of the historic environment that do not receive specific statutory protection — for instance, registered historic parks and gardens — are given consideration during the planning process in line with the Welsh Government's current policy and guidance.

The previous Minister for Housing, Regeneration and Heritage (Huw Lewis AM) told the Communities, Equalities and Local Government Committee, during its [**inquiry into the Welsh Government's Historic Environment Policy**](#) in 2012:

The legislation that currently applies to the Welsh historic environment, we see that it is a bit of a hotchpotch, a piecemeal evolution of things that have happened on an England-and-Wales basis very often, over 30 years or more. To my mind, **that is where the streamlining comes in for sure**. We have an opportunity now with our primary legislative powers to put together a package of legislative support for the historic environment that suits Wales specifically.

The Deputy Minister for Culture, Sport and Tourism defended the decision to amend previous legislation rather than draft a new stand-alone bill in a plenary debate following the introduction of the Bill in May 2015. He stated:

There was consideration given to a consolidation Bill that would be exclusive for Wales, but it was deemed that, working within the legislative timetable of the fourth Assembly and with the resources available, such a consolidation Bill was not practical. The external reference group that was put together to examine what would suit Wales and serve Wales best did not feel that it was a particularly attractive proposition at this moment in time.

3.1. *Amending scheduling arrangements*

Part 2 of the Bill seeks to amend the 1979 Act in the following key ways:

- To introduce a requirement for Welsh Ministers to **consult** before making certain changes to the Schedule. The EM states that the Welsh Ministers currently “routinely” consult owners and inform the LPA and other public bodies prior to making a scheduling decision, unless this is likely to lead to damage of the monument (section 3);
- To give a monument **interim statutory protection** whilst the Welsh Ministers decide whether to include it on the Schedule, or amend its entry on the schedule. The provisions provide for the payment of compensation to the owner if this interim protection causes direct loss or damage and the monument is not subsequently scheduled (section 3);
- To give owners a right to request for the Welsh Ministers to **review** a decision to include a monument in the Schedule, or to amend an entry to the Schedule (section 3);
- To enable Welsh Ministers to change the procedure relating to scheduled monument consent to simplify the process (section 5) and compensation for the refusal of such consent (section 10);
- To **extend the definition of a “monument”** to enable Welsh Ministers to schedule “any thing, or group of things, that evidences previous human activity”. The Explanatory Memorandum estimates that fewer than 30 new sites will be eligible for scheduling under this extended definition. Sites will still have to be of national importance and meet the published criteria (section 22).
- To change the circumstances in which a monument in the sea is to be treated as being in Wales, to bring this into line with the definition of “Wales” in the Government of Wales Act 2006 (section 20).
- To enable notices and other documents served under the 1979 Act to be served by electronic communications (section 22).

3.2. *Preventing damage to scheduled monuments*

- To enable Welsh Ministers to take action (including by issuing an **enforcement notice** or a **temporary stop notice**) where certain works are carried out on a scheduled monument (sections 12-14);
- To **limit the availability of the defence of ignorance** for those who damage or carry out unauthorised works to a monument (sections 15-17).

- To enable Welsh Ministers to **enter land** believed to contain ancient monuments where they believe an ancient monument is at risk of damage or destruction, **without the consent of the owner** or any other person whose consent may be required. The Explanatory Memorandum states that this new power “will only be used in exceptional circumstances” (section 19).
- The Explanatory Memorandum explains that problems in obtaining relevant consents are compounded by uncertainty about the ownership of a monument. It states that “while a land charge is placed on a monument at the time of scheduling, there is no requirement for the Welsh Government to be informed of its sale or transfer”. No such requirement is introduced by the Bill.

3.3. Register of historic parks and gardens

The Bill also places a new statutory duty on the Welsh Ministers to compile, maintain and publish a **register of historic parks and gardens** of special historic interest. A non-statutory register was published in a series of volumes between 1994 and 2007. The register was developed to inform the conservation of historic parks and gardens by groups including owners, LPAs, developers and statutory bodies. Previously sites were only included on the register with the agreement of the owner. The Bill seeks to give Welsh Ministers power to amend the register without needing owners’ agreement (section 18).

3.4. Listed buildings in Wales (Part 3)

The primary piece of legislation governing the protection of listed buildings in Wales is the *Planning (Listed Buildings and Conservation Areas) Act 1990*. Under the 1990 Act, Welsh Ministers have a statutory duty to compile a list of buildings of special architectural or historic interest. The Welsh Ministers must list a building if it meets the published criteria. Once designated, listed buildings are subject to a consent regime under which owners must obtain formal authorisation for specified works.

If a local planning authority considers that an unlisted building of special architectural or historic interest is in danger of alteration or demolition, it can serve a building preservation notice (under the 1990 Act) on the owner and occupier which remains in force for 6 months. The notice lapses if during this 6 month period Welsh Ministers list the building, or determine not to list it.

Part 3 of the Bill seeks to amend the 1990 Act in the following key ways:

- To introduce a duty for Welsh Ministers to **consult** when making a decision whether to list a building. The EM states that Welsh Ministers currently consult owners and occupiers, LPAs and other public bodies when considering a listing building, unless this is likely to damage the building (section 24).
- To give a building **interim statutory protection** whilst the Welsh Ministers make a listing decision. The provisions provide for the payment of compensation to the owner or occupier if this interim protection causes direct loss or damage and the building is not subsequently listed (section 24).
- To introduce a requirement for Welsh Ministers to **review** a decision to amend the list of buildings when requested to do so by an owner or occupier, and to provide Welsh Ministers with the power to make regulations setting out the grounds for a review (section 24).
- To modify temporary listing arrangements that are initiated by the service of a building preservation notice in light of the changes to the listing process brought about by this Bill (section 25).
- To enable Welsh Ministers to issue a “certificate of immunity from listing” (COI) at any time. A COI prevents Welsh Ministers from listing a building for 5 years, and a LPA from serving a building preservation notice on a building for the same period. Currently, a COI request may only be made when an application has been made for planning permission, or when permission has been given (section 27).
- To enable the Welsh Ministers to issue certain documents relating to listed buildings electronically (section 31).
- To provide that where the Welsh Ministers appoint an official to determine an appeal, functions executed by the official are to be treated as those of the Welsh Government for the purposes of the *Public Services Ombudsman (Wales) Act 2005*. This enables the Public Services Ombudsman to investigate any allegations of maladministration (section 32).

3.5. Preventing damage to listed buildings

To enable local planning authorities to issue **temporary stop notices** (TSN) to require the immediate cessation of unauthorised work to a listed building. A TSN would last for 28 days whilst a solution is sought. Current powers available to local planning authorities allow them to issue a listed building enforcement notice, which takes 28 days to enter into effect (section 29).

To **extend the scope of urgent works** that Welsh Ministers and local authorities may carry out to preserve a listed building. Currently, urgent works can only be carried out to preserve unoccupied buildings or unused parts of occupied buildings. The Bill would allow urgent works to be carried out on any listing building as long as this does not interfere unreasonably with its residential use.

The Bill provides for expenses to cover these works to be sought by way of a land charge and by sale and lease of the property. In extreme cases, this may mean the building being sold, without the owner's consent, in order to recover the cost.

The Bill also provides a right of appeal to Welsh Ministers about expenses the Welsh Ministers or a local authority seeks to recover in respect of these works (section 30).

3.6. Advisory Panel for the Welsh Historic Environment

The Bill places a duty on Welsh Ministers to **establish an Advisory Panel for the Welsh Historic Environment** (sections 37-38). The purpose of the Panel is to provide Welsh Ministers with advice on matters relating to the formulation, development and implementation of policy and strategy in relation to the historic environment in Wales. Details of the Panel provided in the Bill include:

- It must prepare a regular three-year forward work programme setting out the areas on which it plans to advise the Welsh Ministers during that period;
- The Panel must not consist of more than 15 people.

There has never been a body with appointed members to advise the Welsh Ministers on historic environment policy. The Ancient Monuments Advisory Board and the Historic Buildings Advisory Council provided advice on certain aspects of casework, but were discontinued in 2010. The Welsh Government currently has a Historic Environment Group, established in 2004. The Group does not have appointed members, but is a forum of organisations with an interest in the historic environment, each of which sends a senior representative.

While the majority of respondents to the Welsh Government's 2013 consultation were supportive of the creation of a statutory advisory panel, some respondents cited concerns about the sum of money being used (£261,000 over five years) for this purpose. The Welsh Government's summary report of the consultation responses highlighted that the major areas of concern were that a panel would be **resource intensive and bureaucratic**.

3.7. *Protecting local heritage assets*

In addition to the national listing process, local authorities may prepare their own local list of buildings which, although not worthy of statutory listing, are considered to be of value to the area in terms of their architectural or historic quality. These lists are usually in some way tied to planning considerations, but being on the list would not normally mean that the building in question was subject to any controls over and above any other building (unless it was in a conservation area).

The previous Minister for Housing, Regeneration and Heritage (Huw Lewis AM) told this Committee during its inquiry into the Welsh Government's Historic Environment Policy in 2012:

I am also aware that there are a number of current tensions. One example is how we manage those elements of the historic environment of Wales that are not provided with statutory protection. For example, some historic buildings might be greatly valued by local communities but do not meet the strict criteria for statutory designation and consequently are more vulnerable to demolition.

In February 2014 Aled Roberts AM called on the Welsh Government to make it a statutory requirement for local authorities to compile a local list. The then Minister for Culture and Sport opposed this, stating:

Our consultations with stakeholders confirm that there is an appetite in local communities for these matters, but we have to take into account the financial constraints that we face and the difficulties that they cause for local planning authorities.

In the Plenary debate following the introduction of the Bill in May 2015, the Deputy Minister for Culture, Sport and Tourism stated:

I think we must distinguish between what is considered 'of local interest' and what is designated as being a listed building. I think that the historic environment records will help to capture assets of local interest that don't necessarily meet the criteria for listing, and, in so doing, and in following policy guidance on planning, I would hope that assets of local interest will be better protected. Indeed, where local lists are already composed, those local lists should be referred to as part of the planning process.

In its response to the Welsh Government's 2013 consultation, the WLGA stated that:

The identification of local lists is supported however there are real concerns over the current and future capacity within local authorities to become involved in this.

Along with the Bill, the Welsh Government is introducing a range of new policy and guidance for the historic environment sector (available in draft form on the Cadw website [here](#)). Included within this is the document *Managing Lists of Historic Assets of Special Local Interest in Wales*.

4. Response to the Bill

In his legislative statement to Plenary on the Bill, the Deputy Minister, Ken Skates AM, stated:

By safeguarding our historic environment while facilitating its sustainable management, the Historic Environment (Wales) Bill will help the historic environment continue to contribute to the creation of sustainable and distinctive places, where the citizens of Wales have access to homes, jobs and other requirements of modern life that are essential to prosperity, health and happiness. It shares its high-level goal with the Welsh Government's Planning (Wales) Bill and the recently passed Well-being of Future Generations (Wales) Act 2015.¹

Conservative spokesperson and chair of the Cross Party Group on Tourism, Suzy Davies AM, was pleased with the "aims and purposes" of the Bill but she had many potential reservations about certain areas, including:

As regards the immunity from listing, I can see why this could be a tool to prevent deliberate neglect of buildings, and I think this is valuable, but it does leave open a question as to what, at law, would constitute sustainable new use. So, how do you envisage the Bill preventing planning authorities refusing imaginative applications with a view to subsequently allowing an application to demolish and build something else in place of that building?²

Bethan Jenkins AM of Plaid Cymru thanked the Deputy Minister for his statement however she sought clarification on certain issues which were raised, including:

With regard to advisory panels, as Plaid Cymru, we would like to see the appointments being made by the National Assembly for Wales so that we can ensure that they're fully independent. As has been exemplified by another Member here today, accessing those panels can be very difficult, and we want to be making sure that there's expertise across the heritage sector, and that it's not front-loaded with certain sectors that may have more influence with you as Minister.³

Spokesperson for the Liberal Democrats, Peter Black AM noted that parts of the bill were "worth supporting" by the group, however he echoed some of the concerns already raised, stating:

Like Bethan Jenkins, though, I do have concerns about the protection that can be afforded to buildings of local interest and significance, such as the Customs House in Port Talbot, such as the Vulcan pub in Cardiff, for example, which were considered not to be of sufficient merit by Cadw to be listed under a national listings system, but which do have, in my view and other people's views, sufficient merit to be protected on a local basis. I was wondering, although there are provisions in here in terms of stop notices and in terms of temporary preservation orders, I think, to actually enable a local authority to intervene, it just seems to me that these are temporary issues that need to lead on to a more permanent listing.⁴

¹ RoP, 5 May 2015 [accessed 3 June 2015]

² Ibid.

³ Ibid.

⁴ Ibid.

The Council for British Archaeology welcomed the bill:

The CBA has been heavily involved with the creation of the Bill as a member of the External Reference Group and Historic Environment Group. It complements goals set out in the Planning Bill and the Well-being of Future Generations Act. It will also be complemented by new policy, advice and guidance that has been developed to support the legislation.

CBA Director Dr Mike Heyworth MBE said, "The CBA welcomes the introduction of this Bill and the significant measures that are proposed. Of particular significance is the plan to put Historic Environment Records on a statutory footing which is something that we have been pressing for across the UK. We are pleased to have been working with colleagues in Wales to help shape the Bill and hope that it will achieve Royal Assent in the coming year."⁵

The Wales Council for Voluntary Action stated:

Our historic environment, which includes ancient monuments and historic buildings as well as the landscapes that surround them, shapes our national identity and brings significant economic benefits, accounting for one-fifth of the tourism expenditure in Wales.

This unique and valuable legacy, however, can easily be threatened. Some of our nationally important listed buildings are suffering from neglect and decay. Monuments in Wales have also suffered from more deliberate damage, including the bulldozing of parts of 1,200-year-old Offa's Dyke and damage to hill forts that have been in existence for over 2,000 years.

There were 119 cases of damage to scheduled monuments recorded between 2006 and 2012, with only one successful prosecution.

One of the aims of the Historic Environment (Wales) Bill is to make it more difficult for individuals to escape prosecution for such criminal damage by claiming ignorance of a monument's status or location.

It will also give Welsh Ministers powers to take immediate and effective action if a scheduled monument is threatened and oblige owners who have damaged monuments to undertake repairs.

The Bill will help to stop some of our greatest historic buildings falling into disrepair by allowing local authorities to take action to halt decay and providing them with new ways of recovering the costs of any urgent works.⁶

⁵ CBA, New Bill for Protection of historic environment in Wales introduced to National Assembly, Press Release, 5 May 2015 [accessed 3 June 2015]

⁶ WCVA, Welsh Government announce Historic Environment (Wales) Bill, Press Release, 6 May 2015 [accessed 3 June 2015]