

National Assembly for Wales
Communities, Equality and Local
Government Committee

Historic Environment (Wales) Bill: Stage 1 Committee Report

October 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Current Committee membership:



Christine Chapman (Chair)
Welsh Labour
Cynon Valley



Peter Black
Welsh Liberal Democrats
South Wales West



Alun Davies
Welsh Labour
Blaenau Gwent



Jocelyn Davies
Plaid Cymru
South Wales East



Janet Finch-Saunders
Welsh Conservatives
Aberconwy



Mike Hedges
Welsh Labour
Swansea East



Mark Isherwood
Welsh Conservatives
North Wales



Gwyn Price
Welsh Labour
Islwyn



Gwenda Thomas
Welsh Labour
Neath



Rhodri Glyn Thomas
Plaid Cymru
Carmarthen East and Dinefwr

The following Members attended as substitute members of the Committee during this Inquiry:



John Griffiths
Welsh Labour
Newport East



Bethan Jenkins
Plaid Cymru
South Wales West

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The Committee's recommendations

The Committee's recommendations to the Member in charge are listed below, in the order that they appear in this report. Please refer to the relevant page of the report to see the supporting evidence and conclusions.

Recommendation 1. We recommend that the Assembly agrees the general principles of the Bill. (Page 16)

Recommendation 2. We recommend that section 33(2) of the Bill is amended to include a specific reference to historic place-names and that the Deputy Minister brings forward an amendment at Stage 2 to give effect to this. (Page 18)

Recommendation 3. We recommend that guidance setting out the responsibilities of owners and occupiers of monuments or buildings that are being considered for designation is issued at the same time as a notice of the proposed listing or scheduling is served. This guidance should include an explanation of the offences for contravention of interim protection arrangements. (Page 22)

Recommendation 4. We recommend that the Deputy Minister further considers how a system of statutory protection for historic parks and gardens could be provided within the Bill. This consideration should include an assessment of the practical and financial implications for the Welsh Government, owners and other relevant parties of such a system. (Page 35)

Recommendation 5. We recommend that the circumstances in which local authorities would be expected to issue temporary stop notices should be clearly set out in guidance that supplements the Bill. (Page 37)

Recommendation 6. We recommend that the Deputy Minister provides guidance to local planning authorities on the use of their additional powers in relation to urgent works (section 30 of the Bill). (Page 42)

Recommendation 7. Further, we recommend that the Deputy Minister clarifies whether it is his intention for land charges against the recovery of costs of urgent works to listed buildings to be first

charges against the property (i.e. taking precedence over other pre-existing interests in the property, such as mortgages). (Page 42)

Recommendation 8. If it is the Deputy Minister's intention for land charges to be first charges, we are concerned that section 30 of the Bill does not make this clear. We recommend that the Deputy Minister bring forward an amendment at Stage 2 to address this issue. (Page 42)

Recommendation 9. We recommend that the Deputy Minister explore the feasibility of introducing financial penalties for owners who deliberately allow their listed buildings to fall into disrepair. (Page 42)

Recommendation 10. On the issue of bilingual HERs, we recommend that the Deputy Minister clarifies whether the requirements on local authorities to comply with standards under the Welsh Language Measure 2011 will apply to the provision of HERs, including in instances where authorities choose to discharge their HER functions. (Page 49)

Recommendation 11. We recommend that the Bill is amended to require local authorities to prepare and maintain lists of historic assets of special local interest and that the Deputy Minister brings forward an amendment at Stage 2 to give effect to this. (Page 50)

Recommendation 12. We recommend that the Deputy Minister should raise awareness among local authorities in Wales of the advantages of using HPAs to encourage them to explore the use of agreements. This should be done through promotion of good practice identified through the HPA pilots in England. (Page 53)

Recommendation 13. We recommend that additional support from the Welsh Government should be made available to authorities who show willingness to enter into HPAs. This should include practical support in the early development of these agreements. (Page 54)

Recommendation 14. We recommend that the Bill includes a requirement on the Advisory Panel for the Welsh Historic Environment to report to the Welsh Ministers annually on work undertaken and outputs achieved, and to make these reports publicly available. (Page 58)

1. Introduction

1. On 1 May 2015, Ken Skates AM, Deputy Minister for Culture, Sport and Tourism ('the Deputy Minister') introduced the [Historic Environment \(Wales\) Bill](#)¹ ('the Bill') and accompanying [Explanatory Memorandum](#).² The Deputy Minister made a [statement](#) on the Bill in Plenary on 5 May 2015.

2. At its meeting on 21 April 2015, the Assembly's Business Committee agreed to refer the Bill to the Communities, Equality and Local Government Committee ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 9 October 2015.

Terms of scrutiny

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

the general principles of the Historic Environment (Wales) Bill and the need for legislation with the aim of:

- giving more effective protection to listed buildings and scheduled monuments;
- enhancing existing mechanisms for the sustainable management of the historic environment;
- introducing greater transparency and accountability into decisions taken on the historic environment;
- any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);

¹ Historic Environment (Wales) Bill, available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12573>

² Historic Environment (Wales) Bill, Explanatory Memorandum, available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12573>

- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

The Committee's approach

4. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform its work. It also took oral evidence from a number of witnesses. All [consultation responses](#) and the [schedule of oral evidence](#) can be found on the Assembly's website.
5. The following report represents the conclusions and recommendations that the Committee has reached based on the evidence received during the course of its work.
6. The Committee would like to thank all those who have contributed to its work.

2. General principles and need for the Bill

Background

7. The majority of the Bill seeks to amend the existing legislation governing the management of the historic environment in Wales, namely the *Ancient Monuments and Archaeological Areas Act 1979* ('the 1979 Act') and the *Planning (Listed Buildings and Conservation Areas) Act 1990* ('the 1990 Act').

8. These Acts put arrangements in place for the designation and protection of scheduled monuments and listed buildings. They also provide consent procedures for permitted works to these assets and establish offences for unauthorised works to, and damage of, them.

9. The Bill places the existing register of historic parks and gardens, and historic environment records, on a statutory footing. It also enables the Welsh Ministers and local planning authorities ('LPAs') to enter into Heritage Partnership Agreements and provides for the establishment of an Advisory Panel for the Welsh Historic Environment.

Evidence from respondents

General principles

10. There was broad support for the general principles of the Bill, with many respondents specifically welcoming its introduction. There was general consensus that the proposed changes to the 1979 and 1990 Acts were timely and would improve the protection and management of the historic environment in Wales.

11. In supporting the general principles, the Architectural Heritage Fund ('AHF') stated that the proposed changes to the existing Acts "comprise a straightforward series of sensible steps that effectively harmonise the legislative processes of [those Acts]".³

12. Similar views were expressed by the Royal Commission on the Ancient and Historical Monuments of Wales ('the Royal Commission'), Clwyd-Powys Archaeological Trust, Glamorgan-Gwent Archaeological Trust and the National Park Authorities.⁴

³ Written evidence, HE 35

⁴ Written evidence, HE 10, HE 02, HE 05, HE 46

13. Some respondents, although supportive of the general principles, suggested that the Welsh Government should go further. The National Trust Wales, for example, noted that the Bill was an “enhancement rather than a radical new approach”, and hoped that “the Welsh Government will go beyond this Bill to take a proactive approach to our historic environment and bring forward more radical solutions to reduce the number of historic buildings, monuments and landscapes at risk.”⁵

14. The Society for the Protection of Ancient Buildings (‘SPAB’) strongly supported the Bill “as a significant step forward”, which could “set Wales ahead of other UK nations in terms of historic environment protection”. However, it “would have hoped to see even greater change”.⁶

15. Dr Charles Mynors, expert in heritage law, described the general principles as “sensible” and noted that some of the Bill’s provisions had already been incorporated into the law in England. He suggested that the Bill might present “a unique opportunity to go further in Wales and have a system that is actually better than the one operating in England”.⁷

16. Dr Mynors also questioned whether the Bill could have done more to integrate heritage and planning law.⁸ A number of respondents, including the UK Environmental Law Association, made similar points and emphasised the need for improved co-ordination between the Bill and the Well-being of Future Generations (Wales) Act 2015, the Planning (Wales) Act 2015 and the Environment (Wales) Bill.

Approach to drafting

17. A number of respondents commented on the approach taken by the Welsh Government to the drafting of the Bill. It was suggested that making extensive amendments to the existing legislation could add to its complexity and make it less accessible for users. On this issue, the Wales Heritage Group stated that “the introduction of a third Act additional to the two existing Acts, rather than a single consolidated Act, will inevitably confuse many involved in the care and management of the historic environment”.⁹

⁵ Written evidence, HE 09

⁶ Written evidence, HE 43

⁷ Written evidence, HE 19

⁸ Ibid

⁹ Written evidence, HE 41

18. Similarly, the Institute of Historic Building Conservation ('IHBC') reported that "the Planning Acts are already far too complex and this approach makes them more inaccessible to the public than ever". It called for the Bill to be replaced by a standalone Bill or for a consolidation Bill to follow.¹⁰

19. Other respondents, including the Welsh Local Government Association ('WLGA') reported that the current legislative framework was generally well understood and that the introduction of an amending Bill was not "a fundamental issue".¹¹ Clwyd-Powys Archaeological Trust suggested that amending legislation that practitioners were familiar with would minimise the potential for problems during the transitional period.¹²

20. Dyfed Archaeological Trust suggested that "a completely new Bill" would have been preferable, but acknowledged that this would have had significant resource implications. It stated that amending the existing Acts was "the compromise" and that the amendments were "very sensible and straightforward" and "reasonably easy to understand".¹³

21. In commenting on the need for a future consolidation exercise, Dr Mynors emphasised that this would be "a much larger exercise than just looking at the legislation affecting the historic environment".¹⁴

Matters not provided for in the Bill

22. Several respondents commented, or expressed disappointment, that the Bill did not include provision to improve protection of other aspects of the historic environment, including marine heritage, world heritage, portable heritage, Welsh place-names, historic landscapes and conservation areas.

23. While welcoming the Bill, the Joint Nautical Archaeological Policy Committee stated that it "fails in any meaningful way to engage with the marine historic environment or to address the challenges which it

¹⁰ Written evidence, HE 29

¹¹ Record of Proceedings (RoP), para 15, 10 June 2015 (NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Communities, Equality and Local Government Committee)

¹² RoP, para 178, 10 June 2015

¹³ RoP, para 167, 10 June 2015

¹⁴ Written evidence, HE 19

faces”.¹⁵ Similar views were expressed by the Royal Commission and the National Museum Wales.¹⁶

24. The National Park Authorities, Flintshire County Council and Cardiff Civic Society expressed disappointment that the Bill did not address the law relating to conservation areas.¹⁷ Cardiff Civic Society stated that this was a “missed opportunity to reform an area of heritage planning legislation that is now out-dated, inappropriate and cumbersome in operation”,¹⁸ while Flintshire County Council referred to the lack of provision relating to conservation areas as a “fundamental omission”.¹⁹

25. The Federation of Museums and Art Galleries of Wales was “dismayed” that the Bill did not include reference to the portable heritage of Wales.²⁰

26. A number of respondents, including the National Trust Wales, referred to the lack of provision for historic landscapes.²¹ One respondent stated that the lack of reference to the existing *Register of Landscapes of Historic Interest in Wales* (“the Register”) meant that the Bill was “flawed” and would “have the serious unintended consequence of irrevocably diminishing the Register’s status as an established planning tool in Wales”.²²

27. The Welsh Language Commissioner (“the Commissioner”) and the Welsh Place-Name Society believed that the Bill should do more to protect historic place names.²³ The Commissioner reported “considerable concern in many communities in Wales that the names of historical houses and buildings (...) are being changed”. She highlighted the significance of place names within the context of the historical environment and stated:

“The meaning and origin of the name of a feature in the historic environment can reveal as much about it, including its origin and provenance: the historical use made of it; who live in or used it; how and with what it was constructed etc. (...)

¹⁵ Written evidence, HE 42

¹⁶ Written evidence, HE 10, HE 55

¹⁷ Written evidence, HE 46, HE 50, HE 11

¹⁸ Written evidence, HE 11

¹⁹ Written evidence, HE 50

²⁰ Written evidence, HE 13

²¹ RoP, para 303, 18 June 2015

²² Written evidence, HE 56

²³ Written evidence, HE 38, HE 20

Indeed it could be argued that the danger and risk to the survival of some of these names is equal in some cases to the risk to the survival of the historic environment itself.”²⁴

28. Similarly, the Welsh Place-Name Society believed that place names “should be included as historic assets of national significance to be noted and protected” and that, in the absence of provision for the protection of place names, the Bill was “incomplete”.²⁵

Implementation and resources

29. Despite the support for the Bill, a number of respondents questioned whether it would make a significant difference to the protection and management of the historic environment. There was concern among respondents that the existing financial challenges facing local authorities, and the heritage sector more generally, would be a barrier to the effective implementation of the Bill’s provisions.

30. The WLGA reported that “most LPAs can only concentrate on core statutory functions as a result of funding and capacity pressures” and that many authorities were “struggling to fulfil current obligations”. It referred to the new obligations on LPAs resulting from the Planning (Wales) Act 2015 and the need for authorities to “make difficult decisions regarding prioritisation of work”, which could “result in a lack of resources directed towards the implementation of the Bill’s provisions”.²⁶

31. The Georgian Group reported that, in recent years, there had been a “noticeable drop (over 35%) in the number of qualified Conservation Officers”. It raised concern that local authorities “may not have the capacity to employ suitably qualified staff”, the effect of which could be “to degrade the whole issue of heritage regulation”.²⁷

Evidence from the Deputy Minister

32. The Deputy Minister explained that, while the existing Acts that the Bill seeks to amend are “fundamentally robust”, there are “deficiencies” within those Acts that need to be addressed. He asserted that the Bill and the accompanying guidance and policy advice “will set

²⁴ Written evidence, HE 38

²⁵ Written evidence, HE 20

²⁶ Written evidence, HE 06

²⁷ Written evidence, HE 23

Wales ahead of the other nations in the UK” in respect of protection and management of the historic environment.²⁸

33. The Deputy Minister explained that, although the possibility of a consolidation Bill had been considered, “given the constraints on resources and time, the Bill that has been presented was believed to be the most appropriate and the best way forward”. He pointed out that there was nothing preventing a consolidation Bill being considered by a future Assembly. He added:

“...stakeholders and the general public are already familiar with the legislation, so, in amending the two Acts and in addressing those deficiencies, it’s felt that the people of Wales and our stakeholders will be able to adapt to the changes relatively more easily.”²⁹

34. In commenting on the suggestion that the Bill provided an opportunity to better integrate heritage and planning law, the Deputy Minister stated:

“...I don’t think we could actually deliver an amalgamation of the duties and of the systems that would place both planning and management of historic assets on an equal footing. I think that what we would see is a denigration of professional expertise within conservation in local authorities”.³⁰

35. He went on to state that he was “not persuaded that any cost saving would outweigh the potential risk to Wales’s heritage by placing historic environment consents within wider development control”.³¹

36. When asked whether he had considered including provision in the Bill to protect historic place names, the Deputy Minister stated:

“[The] Bill focuses on the physical traces of the historic environment, including archaeological sites, monuments, historic buildings, and less on intangible or less tangible elements of the historic environment, such as place names.”³²

²⁸ RoP, para 7, 4 June 2015

²⁹ RoP, para 13-14, 4 June 2015

³⁰ RoP, para 74, 8 July 2015

³¹ RoP, para 34, 8 July 2015

³² RoP, para 33, 8 July 2015

37. He was “not convinced that there are any legislative controls that could be regulated to enhance the protection of place names.”³³

38. The Deputy Minister believed that the proposal to place Historic Environment Records (‘HERs’) on a statutory footing (section 33) would “help to promote the connection and the preservation of information on place names” and “ensure that there is a better gathering of information concerning Welsh place names”. He emphasised the need to work with owners to ensure that they “fully appreciated” the historical significance of their assets, and that this was “the best course of action, and the best way of preventing unnecessary changes to place names”.³⁴

39. Notwithstanding this, the Deputy Minister agreed to consider how best to address the issue of the protection of historic place names in the Bill, in light of any recommendations made by the Committee.³⁵

40. On the issue of the lack of provision in the Bill for portable heritage, the Deputy Minister explained that, while it had been considered at the “very early stages of engagement on the scope of the Bill (...) it was not deemed to be beneficial to take forward”. Instead, he had established an expert panel “to look at the future delivery of museums across Wales, and the sustainability of museums”. The Panel reported in August 2015.³⁶

41. In commenting on the extent to which the Bill makes provision for the protection of marine heritage, the Deputy Minister explained that “the improved protection for scheduled monuments will extend to Welsh territorial waters”, which would “enable those assets beneath the surface of the water to be considered and to be included within historic environment records.”³⁷

42. In responding to the concern about the lack of provision in the Bill for conservation areas, the Deputy Minister explained that a proposal to merge conservation consent with planning permission had been included in the consultation on the Bill’s proposals. He reported that the decision was taken not to include provision in the Bill for this following concerns raised “about the risk of reduced protection of

³³ RoP, para 34, 8 July 2015

³⁴ RoP, para 205, 4 June 2015

³⁵ RoP, para 36, 8 July 2015

³⁶ RoP, para 91, 8 July 2015

³⁷ RoP, para 105, 8 July 2015

conservation areas and the marginalisation of skilled conservation officers within local planning authorities”.³⁸

43. When commenting on the lack of provision in the Bill for World Heritage Sites, the Minister’s official stated that a “significant proportion” of all the World Heritage Sites in Wales already receive statutory protection by virtue of their designation as scheduled monuments or listed buildings. He referred to the draft guidance, *Managing Change in World Heritage Sites*, which “gives that clear (...) steer to all authorities concerned about how they should manage and maintain [those] sites”.³⁹

44. In responding to concerns from respondents that existing budgetary constraints within local government may compromise the effective delivery of the Bill’s aims, the Deputy Minister stated that the Welsh Government had “ensured that the Bill’s proposals have the aim of minimising additional burdens on local authorities”.⁴⁰ He explained that Cadw officials were “engaging with local planning authorities trying to identify how resources (...) and how expertise can be shared”.⁴¹

Our view

45. We note the broad support in evidence for the general principles of the Bill. In the main, the Bill’s provisions are uncontentious and appear to address identified needs within the existing legislative framework for the protection and management of the historic environment. While some respondents raised concerns about specific provisions or made detailed points about drafting, these did not override their support for the Bill.

46. In view of the above, **we recommend that the Assembly agrees the general principles of the Bill.** Notwithstanding this recommendation, we have a number of specific comments on the Bill and some broader suggestions on the implementation of its provisions.

47. There was general agreement that successful delivery of the Bill’s aims will be largely dependent on the willingness and ability of the Welsh Ministers and local government to exercise their enhanced

³⁸ RoP, para 111, 8 July 2015

³⁹ RoP, para 57, 8 July 2015

⁴⁰ RoP, para 5, 8 July 2015

⁴¹ RoP, para 17, 8 July 2015

powers and meet their additional statutory duties. We heard that local planning authorities are currently operating within reduced budgets and that there is a lack of capacity and expertise within some authorities. Given that the powers for authorities provided in the Bill are, in the main, discretionary, we share the concern in evidence that authorities may be reluctant, or indeed unable, to exercise these powers due to financial constraints. Therefore, while the Bill provides authorities with additional, potentially useful tools to improve the protection and sustainable management of the historic environment, there is a risk that, without additional funding, it will have limited impact in practice.

48. More generally, we acknowledge that the current budgetary constraints within the Welsh Government and local government were an influencing factor when developing the Bill's proposals. But, this should not necessarily have prevented the inclusion of more ambitious provisions in the Bill, which could have been brought into force at an appropriate point in the future, when the financial climate was more favourable. We question whether this Bill could have been used as an opportunity to bring forward more ambitious and wider legislative proposals for heritage protection in Wales.

49. On the issue of consolidation, we recognise that consolidating the existing Acts may have been a time consuming exercise. However, given that this Bill has been the result of a lengthy process of development and consultation, we question whether the introduction of a consolidation Bill would have extended the overall timeframe for the Bill significantly. Further, while we acknowledge that the development of a consolidation Bill may have been more resource intensive, such an approach could have been more cost-effective in the longer-term.

50. We are concerned that the Bill, as drafted, is difficult to navigate and adds to the complexities of the existing legislation, which has already been the subject of significant amendment. We believe that Welsh legislation should be both clear and accessible and we are not convinced that the Bill meets these criteria. While we acknowledge that a consolidation Bill is not an option at this stage of the Bill's passage and so late in the Assembly term, we believe that this has been a missed opportunity to introduce a comprehensive, stand-alone law in Wales on the historic environment.

51. Although respondents were broadly content with the Bill's existing provisions, a recurring theme in evidence was the lack of

provision for the protection and management of other heritage assets. Given that we did not have time to explore the majority of this evidence in detail, we are not in a position to comment on whether, or how, the Bill could be improved in this regard.

52. Notwithstanding this, on the issue of historic place names, we heard compelling evidence about their role in providing a unique insight into Wales' heritage. Therefore, we were concerned to hear that these place names can be changed with little or no challenge. We believe that the lack of consideration of historic place names is a gap within the existing legislative and policy framework which should be addressed.

53. We acknowledge that providing statutory protection for historic place names may be challenging and difficult to deliver. We also acknowledge the Deputy Minister's assertion that the proposed HERs provided for in the Bill will assist in preserving historic place-names. While this may be the case, place-names are not explicitly mentioned in the list of information that should be included in HERs. We believe that a specific reference to place-names within the list would provide a clear signal to local planning authorities and other relevant parties that place-names should be recorded and given due consideration within the context of heritage protection. This could be accompanied by the introduction of a mechanism for local communities to nominate place names within their area, which they believe are of significant local and historical interest. We believe that this could be taken forward as part of the wider proposals for Lists of Historic Assets of Special Local Interest. We refer the Deputy Minister to our comments in Chapter 7.

We recommend that section 33(2) of the Bill is amended to include a specific reference to historic place-names and that the Deputy Minister brings forward an amendment at Stage 2 to give effect to this.

54. On a separate issue, we recognise the important contribution that portable heritage makes to increasing our understanding of the past. We also recognise the significant role of museums in preserving portable heritage and in engaging the public with Welsh culture and history. We welcome the publication of the report on the *Expert Review of Local Museum Provision in Wales 2015* and note its recommendations. We look forward to a positive response from the Deputy Minister, in particular in terms of how the Welsh Government

will improve the protection and sustainable management of portable heritage.

3. Amending scheduling and listing arrangements

Consultation, interim protection and review

Background

55. Sections 3 and 24 of the Bill amend the 1979 and 1990 Acts in respect of scheduling and listing arrangements for monuments and buildings respectively.

56. The Bill amends these Acts to include provision for a duty on the Welsh Ministers to consult with appropriate persons, including the owner, when proposing to make changes to the schedule of monuments of national importance ('the Schedule') or to the list of buildings of special architectural or historic interest ('the List').

Evidence from respondents

57. Respondents were generally supportive of the provisions that seek to amend arrangements for scheduling monuments and listing buildings.

58. There was widespread support for the proposed requirement on the Welsh Ministers to consult before making changes to the Schedule or List. Respondents believed that this would provide greater transparency within the designation process which, according to Dyfed-Archaeological Trust, was "long overdue".⁴²

59. The UK Environmental Law Association expressed disappointment about the "lack of provision for public participation in the processes for designating scheduled monuments and listed buildings". It reported that public participation was "clearly established at an international level as an essential principle in decision making on environmental protection and sustainable development".⁴³ The AHF made a similar point and sought clarification on whether consultation would extend to representatives of the local community in which the heritage asset was located.⁴⁴

60. While Dr Mynors stated that statutory consultation seemed "desirable" and "sensible", he raised concern that "it will lead to a

⁴² Written evidence, HE 03

⁴³ Written evidence, HE 07

⁴⁴ Written evidence, HE 35

number of unmeritorious claims that particular monuments and buildings – especially the latter – are not worthy of protection”.⁴⁵

61. There was broad consensus among respondents that interim protection⁴⁶ for monuments and buildings was necessary in order to minimise the risk of damage during the consultation period, prior to designation.

62. Those respondents who commented on the requirement on the Welsh Ministers to review a designation decision⁴⁷ at the request of the owner or occupier were supportive of it. The Church in Wales suggested that an owner should be able to request a review of a listing decision “at any time and not simply object at the time of a proposed listing”.⁴⁸

Evidence from the Deputy Minister

63. On the issue of public consultation, the Deputy Minister “[did] not feel it appropriate to open this process to those who will not be directly affected by the proposal to designate.” He went on to explain that “the public do have the opportunity at an earlier stage in the process to ask the Welsh Ministers to consider whether an asset merits designation”, which he believed was “the most appropriate point for public participation.”⁴⁹

Our view

64. We welcome the proposed requirement on the Welsh Ministers to consult before making a scheduling or listing decision. We believe that this should help improve transparency and accountability in respect of these decisions.

65. We note that, under the existing legislation, a designation can only be challenged by judicial review, which is likely to be costly, time consuming and very limited in scope. As such, we welcome the introduction of the right for owners and occupiers to request that the

⁴⁵ Written evidence, HE 19

⁴⁶ The Bill introduces interim protection so that, during the consultation period, the provisions of the 1979 and 1990 Acts will apply to a monument or building as if they were already scheduled or listed.

⁴⁷ The Bill introduces a right for owners and occupiers, in certain circumstances, to request that the Welsh Ministers review the scheduling or listing decision. Where a decision is made not to designate a monument or building, the Bill makes provision for the payment of compensation where the imposition of interim protection leads to direct loss or damage.

⁴⁸ Written evidence, HE 30

⁴⁹ RoP, para 132, 8 July 2015

Welsh Ministers review a designation decision. We believe that this approach to review is more appropriate and proportionate than recourse to the courts.

66. We believe that interim protection is an essential measure in order to safeguard monuments and buildings against damage or destruction during the statutory consultation period. Without this protection there is a risk that assets could be knowingly damaged or destroyed to avoid designation. We also believe that the provision of compensation (for loss or damage caused by interim protection) provides an appropriate balance between the need to protect the interests of owners and occupiers as well as to protect assets before a designation decision is made.

67. We welcome the development of the guidance, *Managing change to listed buildings in Wales*, which the Deputy Minister has told us will be made available to all new owners of listed buildings. However, it is equally important to ensure that owners and occupiers whose assets are subject to interim protection understand what this means, and are fully aware of the offences for contravention of protection arrangements. This will be particularly important in the case of buildings in private ownership whose owners may have no prior knowledge of protection arrangements.

We recommend that guidance setting out the responsibilities of owners and occupiers of monuments or buildings that are being considered for designation is issued at the same time as a notice of the proposed listing or scheduling is served. This guidance should include an explanation of the offences for contravention of interim protection arrangements.

68. We recognise the benefits that the historic environment brings to communities across Wales and the potential role of historic assets in stimulating regeneration. As such, it is important to ensure that communities are involved in decisions about the historic environment within their local area. However, we are not convinced that public consultation on individual listing proposals, in particular proposals that affect privately owned residential property, is the most appropriate way to achieve this.

69. We believe that Lists of Historic Assets of Special Local Interest provide a more suitable avenue for communities to be involved in decisions on local heritage. We refer the Deputy Minister to our comments in Chapter 7.

Extension of the definition of a “monument”

Background

70. Section 61 of the 1979 Act provides the definition of a “monument” for the purpose of scheduling. Section 22 of the Bill amends the 1979 Act to extend the definition within the Act to include sites that provide evidence of previous human activity but that are devoid of structures or works.

Evidence from respondents

71. Of those respondents who commented, the majority supported the proposed extension of the definition of a “monument”. Glamorgan-Gwent Archaeological Trust explained that “there are certain registers of human activity, and particularly early human activity, in the prehistoric period, where the current legislation doesn’t allow scheduling”. It went on to explain that the extended definition would allow those sites to be better protected.⁵⁰

72. NFU Cymru raised concern that, by virtue of the extended definition, “significant tracts of Wales could be subject to designation”. As such, it emphasised the need for the Welsh Ministers to use the power to designate relevant areas “sparingly”.⁵¹ However, the Royal Commission noted that the new monuments likely to be designated as a result of this change were “small in number” but “hugely important in terms of the scientific value”.⁵²

Evidence from the Deputy Minister

73. In explaining the rationale for the proposed extension of the definition of “monument”, the Deputy Minister stated:

“...there are a small number of nationally, and in some cases internationally, significant sites that can’t currently be scheduled for the reason that they are not based in a structure or building (...) these could include scatters of artefacts from prehistoric times or from industrial activity, or could include scatters of munitions on a battlefield”.⁵³

⁵⁰ RoP, para 183, 10 June 2015

⁵¹ Written evidence, HE 32

⁵² Written evidence, HE 10

⁵³ RoP, para 33, 4 June 2015

74. The Deputy Minister was confident that the necessary safeguards were in place to ensure that the extended definition was applied appropriately. He emphasised that “only a limited number of areas will be able to meet the very high standard of evidence needed to secure recognition as a nationally important monument”.⁵⁴

Our view

75. We note the broad support for the proposed extension of the definition of a “monument”. We recognise that this extension is intended to address an identified need, namely to enable the designation and protection of sites of significant historic importance that are not captured by the existing definition.

76. While the extended definition would provide the Welsh Ministers with much wider discretion to schedule, we note that a site can only be designated if the scheduling criteria, which are well-established and understood by the sector, are met. We believe that this, along with the proposed changes to scheduling arrangements provided elsewhere in the Bill, will enable the extended definition to be applied consistently and appropriately.

⁵⁴ RoP, para 37, 4 June 2015

4. Preventing damage to scheduled monuments

Amendments to the criminal offences and defences relating to scheduled monuments

Background

77. The 1979 Act establishes the offences and defences relating to unauthorised works on, and damage to, scheduled monuments. Any person guilty of an offence under the 1979 Act is liable to a fine or, in some circumstances, imprisonment.

78. Sections 15 to 17 of the Bill amend the 1979 Act in order to limit the availability of the defences under that Act. These defences are often described as ‘defences of ignorance’ because they are about the state of knowledge of the person who commits the offence.

Evidence from respondents

79. There was broad support in evidence for the proposal to limit the ‘defence of ignorance’⁵⁵ for offences relating to unauthorised works and damage to scheduled monuments. However, a number of respondents suggested that the provisions did not go far enough and called for the defence to be removed entirely.

80. According to the National Park Authorities:

“Whilst it is positive that the terms under which the perpetrators of damage to scheduled monuments can plead ignorance have been tightened-up, we feel that the measures in the Bill are still too weak and may prove unworkable in practical terms. They could provide too much latitude for perpetrators to avoid prosecution.”⁵⁶

81. It believed that the defence of ignorance should be removed.⁵⁷ Similar views were expressed by Denbighshire County Council, the Welsh Archaeological Trusts and the Royal Commission, which stated

⁵⁵ Under the Bill, in the case of unauthorised works, the ‘defence of ignorance’ will only apply where the defendant proves that all reasonable steps were taken to find out whether there was a scheduled monument in the area affected by the works. For offences of intentional or reckless damage or destruction, the defence will not apply if the defendant knew or “ought reasonably to have known” that they were damaging or destroying a scheduled monument.

⁵⁶ Written evidence, HE 46

⁵⁷ Ibid

that “the level of easily accessible information online via the Historic Wales portal means that it is very easy to check whether land is designated or not and the ‘ignorance’ defence is even more difficult to justify now than at any time in the past”.⁵⁸

82. In contrast, the NFU Cymru welcomed the decision not to remove the defence. It emphasised the need for a “robust and accurate database of monuments” to be “readily available” and for scheduled monuments to be “highlighted via the land charges register”.⁵⁹ Similar views were expressed by the Historic Houses Association (‘HHA’).⁶⁰

Evidence from the Deputy Minister

83. The Deputy Minister explained that the proposed changes to the defence of ignorance were necessary because such a defence had “long been identified as a block to successful prosecution and its use as an effective deterrent”. He went on to explain that the case of damage to Offa’s Dyke had “brought light to the deficiencies in the current legislation and the need to deal with the ignorance defence claim”.⁶¹

84. The Deputy Minister did not believe it was appropriate to make unauthorised works to a scheduled monument a strict liability offence “because many scheduled sites are not obvious” or easily identifiable, such as those that were below the surface of the ground.⁶²

85. He explained that details of scheduled monuments would be “available online on a mapping database”. He further explained that, before a person undertakes works on a site where there is no obvious sign or indication of a scheduled monument, they would be expected to check on the database that the site was not designated.⁶³

86. The Deputy Minister’s official confirmed that scheduled monuments would appear as a land charge on the Land Registry, which should enable a prospective purchaser to identify whether there was a monument on the land.⁶⁴

⁵⁸ Written evidence, HE 09

⁵⁹ Written evidence, HE 32

⁶⁰ Written evidence, HE 31

⁶¹ RoP, para 45, 4 June 2015

⁶² Ibid

⁶³ RoP, para 52-53, 4 June 2015

⁶⁴ RoP, para 58-60, 4 June 2015

Our view

87. We share the view of the Deputy Minister and of respondents that the existing defence of ignorance makes it too easy for those accused of offences relating to scheduled monuments to avoid prosecution. We believe that the availability of the defence of ignorance weakens, and has the potential to undermine the effectiveness of, the protection arrangements. As such, we agree that there is a need to change the defence so as to introduce a higher standard of proof from defendants.

88. We acknowledge the support for limiting the availability of the defence, as provided for in the Bill. We also acknowledge the suggestion from respondents that the defence should be removed. While it is clear that this suggestion is based on the desire to better protect scheduled monuments, we are not convinced that removal of the defence is either appropriate or reasonable. We recognise that there may be genuine cases where monuments are damaged unintentionally, particularly where the presence or extent of a monument is difficult to determine. It is possible that the proposed extension of the definition of monument, which could mean the designation of sites that show no trace of a structure or works, (see Chapter 3), could lead to difficulties in this regard.

89. In view of the above, we believe that the proposed changes to defences provided for in the Bill are reasonable and strike an appropriate balance between enabling successful prosecution where appropriate and recognising the potential for unintentional damage.

90. We believe that the availability of up-to-date, easily accessible information on the location of scheduled monuments is a prerequisite for the introduction of the new offences. As such, we welcome the Deputy Minister's intention to publish an online database before the new provision relating to defences come into force. If individuals are expected to actively seek information on the location of scheduled monuments to avoid committing an offence, it will be vital to ensure that they are aware of the sources of information available. We believe there is a need to raise public awareness of these sources and of the changes to the offences. We expect the Deputy Minister to consider how best this can be achieved as part of the implementation of the Bill's provisions.

Introduction of enforcement and temporary stop notices for scheduled monuments

Background

91. Under the 1979 Act, it is an offence to carry out works on a scheduled monument unless they have been authorised by the Welsh Ministers or they are permitted works under the Ancient Monuments (Class Consent) Order 1994.

92. Section 12 provides the Welsh Ministers with the power to issue a scheduled monument enforcement notice, and makes provision for an appeal against a notice to a magistrates' court.

93. Section 13 provides the Welsh Ministers with the power to issue a temporary stop notice, which requires an immediate halt to any works that have been, or are being carried out in contravention of that Act. Contravention of a temporary stop notice is an offence and, if found guilty, the accused is liable to a fine.

Evidence from respondents

94. There was general consensus that scheduled monument enforcement notices and temporary stop notices would be useful tools to help prevent damage to scheduled monuments.

95. The UK Environmental Law Association welcomed the provisions and noted that they “bring the law on heritage protection in line with the well-established system of enforcement in planning law”.⁶⁵ Dyfed Archaeological Trust expressed similar views.⁶⁶

96. Glamorgan-Gwent Archaeological Trust also welcomed the introduction of enforcement notices. It reported that “in the past there has been a reluctance by officials to pursue enforcement of conditions attached to Scheduled Ancient Monument consents (...) as there was a lack of powers short of taking action through the courts”.⁶⁷ The Chartered Institute for Archaeologists stated that enforcement notices “provide more flexible alternative (or additional) action to prosecution”.⁶⁸

⁶⁵ Written evidence, HE 07

⁶⁶ Written evidence, HE 03

⁶⁷ Written evidence, HE 05

⁶⁸ Written evidence, HE 18

97. In commenting on the proposals for temporary stop notices, Dr Mynors stated:

“...given that unauthorised works to scheduled monuments and listed buildings already constitute a criminal offence, and are or will be subject to specific powers as to injunctions, there seems little point in introducing temporary stop notices”.⁶⁹

Evidence from the Deputy Minister

98. According to the Deputy Minister, scheduled monument enforcement notices were “important because currently there are no powers available under the 1979 Act to require works to cease or for repairs to be carried out, short of seeking essentially an injunction or successful prosecution.”⁷⁰

99. The Deputy Minister acknowledged that “in most cases, negotiations will lead to unauthorised and potentially damaging works to cease”, but where this was not the case the new powers would allow unauthorised works “to be tackled effectively” and would “also act as a deterrent”.⁷¹ He also acknowledged that damaging scheduled monuments was a criminal offence, but asserted that temporary stop notices were needed “in order to prevent immediate damage (...) and to ensure that damage doesn’t take place”.⁷²

Our view

100. We recognise that the powers provided in the Bill to enable the Welsh Ministers to issue temporary stop notices and scheduled monument enforcement notices are intended to address an identified need (namely to enable the Welsh Ministers to bring an immediate halt to work, and to call for works to cease and for restorative works to be undertaken). We believe that these powers will strengthen existing enforcement provisions and will provide the Welsh Ministers with greater flexibility to effectively tackle unauthorised works and address non-compliance issues.

⁶⁹ Written evidence, HE 19

⁷⁰ RoP, para 43, 4 June 2015

⁷¹ Ibid

⁷² RoP, para 142, 8 July 2015

Power of entry to land believed to contain a scheduled monument

Background

101. The 1979 Act provides powers of entry to monitor and record the condition of a scheduled monument and undertake other functions relating to scheduled monument consent. It also includes a power for persons authorised by the Welsh Ministers to undertake archaeological excavations on land known or believed to contain an ancient monument.

102. Section 19 amends the 1979 Act to provide the Welsh Ministers with the power to authorise a person to enter land for the archaeological investigation of an ancient monument in imminent danger of damage or destruction without the consent of the owner and any other person whose consent might be required.

Evidence from respondents

103. Few respondents commented on the proposed power of entry.

104. NFU Cymru stated that this power “should be used sparingly and with restraint”. It went on to suggest that the Welsh Ministers should exercise the power “in all but the most exceptional circumstances”.⁷³

Evidence from the Deputy Minister

105. The Deputy Minister confirmed that the proposed power of entry would be used “in exceptional circumstances”, such as when an owner could not be traced, were not present in the UK, or were deceased.⁷⁴

106. He reported that the power was “consistent” with the Human Rights Act 1998. His official expanded on this and stated:

“...we’ve considered the human rights implications and we believe that we’ve struck the right balance between the need to protect these monuments and, obviously, the rights of owners. There are safeguards in there because this power can only be used if there’s an imminent risk of damage or destruction (...) there are compensation provisions in the 1979 Act (...) that would apply to this particular provision.”⁷⁵

⁷³ Written evidence, HE 32

⁷⁴ RoP, para 66, 4 June 2015

⁷⁵ RoP, para 73, 4 June 2015

107. Further to this, the Deputy Minister explained that “the Welsh Ministers are under a duty to exercise their powers in accordance with the Convention on Human Rights (section 81 of the Government of Wales Act 2006)”. He also explained that, by virtue of provision within the 1979 Act, a person authorised by the Welsh Ministers to gain entry to land which is occupied cannot do so unless the occupier has been given at least 24 hour notice.⁷⁶

Our view

108. We note that the power of entry to land known or believed to contain an ancient monument without the consent of the owner is limited to cases where the monument is in imminent danger of damage or destruction.

109. We welcome the clarification from the Deputy Minister that this proposed power complies with existing human rights legislation, and his assurance that this power will only be exercised in exceptional circumstances and for a specific purpose, namely to enable the recording of archaeological information that may otherwise be lost. In view of this, we are satisfied that the power is both necessary and proportionate.

⁷⁶ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015, available at: <http://www.senedd.assemblywales.org/documents/s42729/Correspondence%20from%20the%20Deputy%20Minister%20for%20Culture,%20Sport%20and%20Tourism%20-%2021%20July%202015.pdf>

5. Historic parks and gardens

Background

110. The current non-statutory register of historic parks and gardens is maintained by the Welsh Government. Section 18 of the Bill gives statutory status to this register.

Evidence from respondents

111. There was strong support in evidence for placing the existing register of historic parks and gardens on a statutory footing.

112. In supporting the proposed statutory register, Natural Resources Wales ('NRW') stated it believed this would "give due recognition and status to their specific historic interest". It stated that "the arrangements for consultations on planning applications affecting Registered Parks and Gardens, and their settings, will be firmer and clearer", which would help ensure consistency of approach across local planning authorities.⁷⁷ Similar views were expressed by Powys County Council and the Royal Commission.⁷⁸

113. The Country Land and Business Association ('CLA') believed that the register should be accompanied by statutory consultation and the right of review similar to those proposed in the Bill for monuments and buildings.⁷⁹ The HHA called for "some form of appeal mechanism when additions to the register take place without the owner's prior knowledge".⁸⁰

114. Many respondents who commented on the proposed statutory register expressed disappointment that the Bill did not include additional statutory protection for historic parks and gardens.

115. The Wales Heritage Group raised concern that the register was "not accompanied by a new consent regime" and that inclusion on the register "imposes no duty of care on the owner". It also raised concern that the current level of protection afforded to parks and gardens through the planning regime was inadequate.⁸¹

⁷⁷ Written evidence, HE 27

⁷⁸ Written evidence, HE 10

⁷⁹ Written evidence, HE 44

⁸⁰ Written evidence, HE 31

⁸¹ Written evidence, HE 41

116. While welcoming the Welsh Government's intention to issue guidance on the protection and management of historic parks and gardens, Wrexham County Borough Council stated that provision of statutory protection "would have been a more desirable outcome".

117. Monmouthshire County Council and Powys County Council also suggested that provision for statutory protection would have been a welcome inclusion in the Bill,⁸² with Powys questioning whether parks and gardens "should be afforded the same protection as [Areas of Outstanding Natural Beauty] or Conservation Areas."⁸³ Isle of Anglesey County Council implied that statutory protection would make it easier for local planning authorities to "understand what level of protection to give [to historic parks and gardens] when determining planning applications".

118. A few respondents expressed disappointment that statutory registers had not been provided for other heritage assets, including World Heritage Sites and historic landscapes.⁸⁴ Dr Mynors suggested that consideration could be given to extending the register to include other assets, including battlefields, which he believed would be more appropriately designated by a national body, such as Cadw, rather than by local authorities. He went on to suggest that the Bill could include a general power for the Welsh Ministers to establish national registers of historic assets, which would enable additional national lists to be created without recourse to further legislation.

Evidence from the Deputy Minister

119. In emphasising the need for a statutory register of historic parks and gardens, the Deputy Minister explained that, currently, an owner could "opt out of the [non-statutory] register", which was "neither fair nor sustainable".⁸⁵ He stated that "having a comprehensive register is desirable", would be "valuable" and would raise the profile of these assets.⁸⁶

120. The Deputy Minister explained that consultation requirements comparable to those provided elsewhere in the Bill for scheduled monuments and listed buildings were not necessary in respect of historic parks and gardens "simply because the inclusion on the

⁸² Written evidence, HE 45, HE 49, HE 40

⁸³ Written evidence, HE 40

⁸⁴ Written evidence, HE 02

⁸⁵ RoP, para 83, 4 June 2015

⁸⁶ RoP, para 188, 8 July 2015

register doesn't carry any obligation for owners to undertake any particular works or to take any action to maintain a park or garden".

121. He stated that statutory protection for historic parks and gardens was "undesirable" because "it would be hugely bureaucratic" and "costly" for the consenting authority and owners.⁸⁷ The Deputy Minister's official went on to state that there was "a general consensus" that the existing arrangements, whereby local authorities consult Cadw on planning applications that affect a grade I or II* registered historic park and garden, worked "reasonably well".⁸⁸

122. The Deputy Minister's official explained that, while there was an identified need for a statutory register for historic parks and gardens, this was not the case for landscapes.⁸⁹ The Deputy Minister further explained:

"We currently have a comprehensive register of historic landscapes and are in the process of developing an inventory of battlefields. It is difficult to see what additional benefits would proceed from placing these on a statutory basis. It would not result in the inclusion of any new landscapes or battlefields or increase the protection afforded under the planning system."⁹⁰

123. He also explained that, following the consultation on proposals for the Bill, he had agreed to "review the way [that the non-statutory register of historic landscaped was] used within the planning system", which was reflected in the draft Planning Policy Wales and TAN24 published alongside the Bill.⁹¹

Our view

124. We welcome the proposal to place the register of historic parks and gardens on a statutory footing, which gives effect to the recommendation made in our report on the *Welsh Government's Historic Environment Policy*.

125. Notwithstanding this, we believe that there is a need for specific, statutory protection for parks and gardens and we support, in principle, the introduction of such protection in the Bill. However, we

⁸⁷ RoP, para 188, 8 July 2015

⁸⁸ RoP, para 191, 8 July 2015

⁸⁹ RoP, para 224, 8 July 2015

⁹⁰ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015

⁹¹ RoP, para 198, 4 June 2015

acknowledge that we did not receive any detailed evidence on how a system of protection would work in practice or on the delivery costs.

126. In view of the above, **we recommend that the Deputy Minister further considers how a system of statutory protection for historic parks and gardens could be provided within the Bill. This consideration should include an assessment of the practical and financial implications for the Welsh Government, owners and other relevant parties of such a system.** We expect the Deputy Minister to report back to the Committee on this issue no later than the completion of Stage 2 proceedings on the Bill.

6. Preventing damage to listed buildings

Temporary stop notices

Background

127. Section 29 of the Bill amends the 1990 Act to provide local planning authorities with the power to issue a temporary stop notice, which requires an immediate halt to any works on a listed building that have been, or are being carried out in contravention of that Act. Contravention of a temporary stop notice is an offence and, if found guilty, the accused is liable to a fine.

128. Section 29 also provides, in certain circumstances, for claims for compensation from any person with an interest in a building who has suffered direct loss or damage resulting from the serving of the notice.

Evidence from respondents

129. There was general support in evidence for temporary stop notices. According to the HHA, these notices were “a much needed tool to enable local authorities to act quickly if a listed building is under threat from authorised works”. However, it raised concern about the potential redirection of resources to meet the cost of notices, which could lead “to further delays in Listed Building Consent applications”.⁹²

130. Denbighshire County Council raised concern that the proposed power “carries a risk to LPAs in that compensation may be payable in certain circumstances to an owner or others who have an interest in the building”.⁹³

131. While recognising the “value in introducing temporary stop notices”, the National Trust Wales reported that “a major issue currently inhibiting the effective use of stop notices [within the planning regime] is that Local Planning Authorities are wary of the potential cost of delaying works which they might later have to compensate the owner for”.⁹⁴ Related to this, the Royal Town Planning

⁹² Written evidence, HE 31

⁹³ Written evidence, HE 24

⁹⁴ Written evidence, HE 09

Institute ('RTPI') Cymru suggested that "the possible payment of compensation may deter LPAs from using [temporary stop notices]."95

Evidence from the Deputy Minister

132. The Deputy Minister stated that temporary stop notices were "another tool aimed at protecting the historic environment" and that "it would be at the discretion of the local authority to utilise this enhanced power". He went on to state:

"We've heard time and again from our local planning authorities that there is a need to enhance their powers and to remove some of the risk from what they do. Now, whether that be through temporary stop notices or carrying out urgent works with the ability to then recoup some of the costs, local planning authorities need those additional tools at their disposal".96

Our view

133. We believe that temporary stop notices in respect of listed buildings will provide a potentially useful tool for local planning authorities to enable them to effectively tackle unauthorised works and address non-compliance issues.

134. We note the concern in evidence that the provision for payment of compensation may mean authorities are reluctant to issue these notices. We believe it is reasonable to expect authorities to make considered decisions when exercising this new power. However, we also believe that authorities should be clear about the circumstances in which they would be expected to take action.

We recommend that the circumstances in which local authorities would be expected to issue temporary stop notices should be clearly set out in guidance that supplements the Bill.

Extension of scope of urgent works and recovery of costs

Background

135. The 1990 Act provides local planning authorities with the power to carry out urgent works to a listed building for the purpose of preserving that building. These works are limited to unoccupied

⁹⁵ Written evidence, HE 34

⁹⁶ RoP, para 236, 8 July 2015

buildings or on parts of occupied buildings that are not in use. While the 1990 Act provides for the recovery of costs of urgent works it does not provide a specific mechanism for this recovery.

136. Section 30 amends the 1990 Act to extend the scope of urgent works to occupied buildings. If a building is in residential use, urgent works will still be permitted provided that they do not unreasonably interfere with that use.

137. Section 30 also provides for the recovery of costs from urgent works by establishing them as a local land charge. It also gives authorities the power of sale and lease, of accepting the surrender of leases and of appointing a receiver as if they were a mortgagee of the property by deed.

Evidence from respondents

138. There was general consensus that the extension of the scope of urgent works and the power to recover costs were welcome additions to authorities' existing powers which, if utilised effectively, could assist in the preservation of listed buildings. However, a number of respondents raised doubt about whether authorities would choose to exercise these powers, particularly in the absence of any additional funding.

139. On a broader issue, several respondents, including the National Trust Wales, the IHBC, CLA and a number of local authorities suggested that more should be done to address buildings at risk in Wales and highlighted the need for the Welsh Government to provide greater strategic direction in relation to this.

140. The WLGA explained that, currently, local authorities “have significant powers relating to listed buildings including urgent works”.⁹⁷ However, it reported that LPAs were “reticent” to exercise these powers due to the financial and resource implications and “because there’s potentially an awful lot of money (...) that could be tied up for a generation or more”.⁹⁸

141. While welcoming the additional powers provided in the Bill, the WLGA stated that, given the current financial climate, difficult decisions will have to be made regarding the cost of urgent works

⁹⁷ Written evidence, HE 06

⁹⁸ RoP, para 57, 10 June 2015

against the potential recovery of costs and the timeframe for doing so”.⁹⁹

142. According to Isle of Anglesey County Council, the provisions created “new impetus” for authorities to exercise their powers to prevent damage to listed buildings. It believed that the power for authorities to recover costs of urgent works would give them “more confidence” and would minimise the financial risk of taking preventative action.¹⁰⁰

143. However, it reported that the proposed additional powers “will only be useful if there is financial and strategic direction provided by the Welsh Government in supporting their use and ensuring a national strategy for buildings at risk”.¹⁰¹

144. Although the majority of those who commented supported the proposed power to recover costs, several respondents, including the Wales Heritage Group and the SPAB, believed that land charges used for this purpose should be the first charge against the property.¹⁰² Civic Trust Cymru suggested that, unless land charges were the first charge, the proposed power “may be of little benefit”.¹⁰³ Monmouthshire County Council made a similar point.¹⁰⁴

145. In contrast to the above views, the HHA reported “severe reservations” about the proposed extension of the scope of urgent works and the power to recover costs.¹⁰⁵ It stated that the provisions required “significant rethinking”.¹⁰⁶

146. The HHA raised concern about the practical implications for occupants of extending the scope of urgent works to buildings in residential use and suggested that the period of written notice required before works could be carried out (i.e. not less than seven days) was insufficient. It also suggested that the notice period was insufficient in the case of occupied buildings used for commercial purposes.

⁹⁹ Written evidence, HE 06

¹⁰⁰ Written evidence, HE 21

¹⁰¹ Ibid

¹⁰² Written evidence, HE 41, HE 43

¹⁰³ Written evidence, HE 37

¹⁰⁴ Written evidence, HE 49

¹⁰⁵ Written evidence, HE 31

¹⁰⁶ Ibid

147. The HHA raised doubts about the effectiveness of the proposed power to recover costs and questioned whether the comparison made between the recovery of costs and a mortgage debt was appropriate. It stated:

“...the crucial difference is that the holder of a mortgage has entered into a contract with the mortgage company and their occupation of the property is conditional upon that contract. There is no contract between the owner of a listed building and their local authority.”¹⁰⁷

Evidence from the Deputy Minister

148. The Deputy Minister explained that, while LPAs already have the power to carry out urgent works, they were “sometimes reluctant to use those powers” because of “the lack of surety that they’ll be able to recover the costs”.¹⁰⁸

149. In responding to concerns from respondents about the implications of the proposed powers on owners and occupiers, the Deputy Minister asserted that authorities would only exercise these powers “as a last resort”. He added:

“...there are too many cases of owners deliberately neglecting buildings or, whilst well-meaning, not having the financial capacity to care for the buildings, with the result that deterioration continues. So, it’s essential that we give local planning authorities the power to use, and that we’re able to empower them to use, their statutory powers to save buildings important to the community and, indeed, to the nation.”¹⁰⁹

150. Separately, the Deputy Minister acknowledged Members’ concern about the number of unused listed buildings, including ecclesiastical buildings, which were at risk of falling into disrepair. He emphasised the need for “greater flexibility” within the system to help bring those buildings back into use, citing Hay Castle as an example of how this had worked in practice.¹¹⁰ However, he also emphasised the need to provide authorities with the necessary tools to intervene in cases where owners failed to cooperate or take action. He referred to an initiative operating in Barcelona, which involved financial penalties

¹⁰⁷ Written evidence, HE 31

¹⁰⁸ RoP, para 124, 4 June 2015

¹⁰⁹ RoP, para 247, 8 July 2015

¹¹⁰ RoP, para 162, 16 September 2015

being issued to owners of empty buildings.¹¹¹ The Deputy Minister subsequently explained that this initiative was aimed at banks with empty buildings on their books and noted, that it was “not specifically targeted towards historic buildings”.¹¹²

151. When questioned about whether the powers of sale or lease provided in the Bill were proportionate and had any implications for human rights legislation, the Deputy stated that “there are procedural safeguards in place and the owner can dispute the costs [to be recovered] by making representations to the Welsh Ministers”. In addition, he explained that the owner could also challenge the costs through the county court.

152. The Deputy Minister stated that the method of recovery of costs provided in the Bill was “the common means employed by local authorities to recover expenses arising from the use of statutory powers to undertake work”. He also stated that LPAs “must exercise their powers reasonably and in a manner which is human rights compliant or face the risk of a judicial review challenge.”¹¹³

Our view

153. We believe that the extension of the scope of urgent works, and the power for authorities to recover costs, are sensible additions to existing legislative provisions aimed at protecting listed buildings. These should, in theory, make it easier for authorities to intervene for the purpose of preserving a building. While the power to recover costs may provide more financial certainty to local authorities who choose to undertake urgent works, we believe that the initial financial outlay remains a significant barrier.

154. We note that the power to recover costs by sale or lease is already available to authorities as a means of recovering certain expenses. Further to this, the Deputy Minister has provided assurance that this power will only be exercised as a last resort. To this end, we are satisfied that the powers are both necessary and proportionate.

¹¹¹ RoP, para 165 & 172, 16 September 2015

¹¹² Correspondence from the Deputy Minister for Culture, Sport and Tourism, 28 September 2015, available at: <http://www.senedd.assembly.wales/documents/s44610/Correspondence%20from%20the%20Deputy%20Minister%20for%20Culture,%20Sport%20and%20Tourism%20-%2028%20September%202015.pdf>

¹¹³ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015

155. As previously stated, we believe it is reasonable to expect authorities to make considered decisions when exercising these powers. However, we believe it would be helpful if guidance were made available to authorities to assist them in the use of their extended powers in relation to urgent works.

We recommend that the Deputy Minister provides guidance to local planning authorities on the use of their additional powers in relation to urgent works (section 30 of the Bill).

Further, we recommend that the Deputy Minister clarifies whether it is his intention for land charges against the recovery of costs of urgent works to listed buildings to be first charges against the property (i.e. taking precedence over other pre-existing interests in the property, such as mortgages). We expect the Deputy Minister to do so during the Stage 1 debate on the Bill.

If it is the Deputy Minister's intention for land charges to be first charges, we are concerned that section 30 of the Bill does not make this clear. We recommend that the Deputy Minister bring forward an amendment at Stage 2 to address this issue.

On the wider issue of bringing unused listed buildings back into use, we recommend that the Deputy Minister explore the feasibility of introducing financial penalties for owners who deliberately allow their listed buildings to fall into disrepair.

7. Historic environment records

Background

156. There are currently four non-statutory Historic Environment Records ('HERs') in Wales. These store and enable access to information about the historic environment and historic assets in a given area. Under current arrangements, the non-statutory HERs are owned and managed by charitable trusts and maintained by the Welsh Archaeological Trusts ('WATs') who also provide public access to the records.

157. Sections 33 to 36 of the Bill provide for creation, maintenance, publication and access to statutory HERs. They also enable the LPA to delegate the creation and maintenance of its HER as well as provide the Welsh Ministers with the power to issue guidance relating to HERs.

Evidence from respondents

Statutory Historic Environment Records

158. There was strong support in principle for placing HERs on a statutory footing. However, several respondents questioned whether it was appropriate for the duty to create and maintain HERs to lie with LPAs. Respondents sought clarification on, or raised concern about, the practical and financial implications of the duty for LPAs, particularly in the event that the current arrangements did not continue. In addition, concern was raised about the effect on the records of any alternative delivery arrangements.

159. The National Trust Wales stated that giving statutory status to HERs was "essential to effective planning" and it, along with many organisations was "reliant on accessing sound HER data".¹¹⁴ Similar views were expressed by the National Park Authorities.¹¹⁵

160. A few respondents, who reported being regular users of the existing, non-statutory records, raised concern about their quality and completeness and suggested that upgrading would be required before they were given statutory status.¹¹⁶

¹¹⁴ Written evidence, HE 09

¹¹⁵ Written evidence, HE 46

¹¹⁶ Written evidence, HE 16, HE 26, HE 47

161. In responding to the above concern, Clwyd-Powys Archaeological Trust stated that the existing records were “fit for purpose” and met the appropriate standard.¹¹⁷ Dyfed Archaeological Trust acknowledged that, while there were “variations in the records” between the four Trusts, they were “far more consistent in Wales than anywhere else in the UK”.¹¹⁸ Similar views were expressed by Gwynedd Archaeological Trust.¹¹⁹

Appropriateness of placing duty on local planning authorities

162. Isle of Anglesey County Council, Gwynedd Council and Powys County Council believed that the proposed duty on LPAs overplayed the relevance of HERs to their day to day work.¹²⁰ Isle of Anglesey County Council explained that less than 12 per cent of planning applications within its area in the last year had HER input, which “suggests that the proposal for LPAs to take responsibility is flawed”.¹²¹

163. Similar views were expressed by Gwynedd Council, who also raised concern that HERs “would [not] be prioritised from a planning perspective”, given the shortage of resources. It believed that a more appropriate alternative would be for the proposed statutory HERs to be located “with Local Archives or remaining with the [Welsh Archaeological] Trusts but overseen and the duty resting with the Welsh Ministers through the Royal Commission”.¹²²

164. The Institute of Historic Building Conservation was “not convinced that shifting legal and financial responsibility” to LPAs was appropriate and stated there were “inherent difficulties” with this approach. It emphasised the need to ensure that the use of HERs by applicants and LPAs was “promoted as routine” and that this should be carried out at “a national level”.¹²³

165. Several respondents, including Denbighshire County Council, Powys County Council and the Royal Commission raised concern about the potential detrimental effect on HERs if LPAs chose to create and maintain their own HERs or to contract this work out to providers other than the WATs.¹²⁴ According to the Royal Commission, this carried “a

¹¹⁷ RoP, para 253, 10 June 2015

¹¹⁸ RoP, para 258, 10 June 2015

¹¹⁹ RoP, para 259, 10 June 2015

¹²⁰ Written evidence, HE 21, HE 33, HE 40

¹²¹ Written evidence, HE 21

¹²² Written evidence, HE 33

¹²³ Written evidence, HE 29

¹²⁴ Written evidence, HE 24, HE 40, HE 10

risk of multiplicity of approaches”, which “could lead to fragmentation [of the records]” and “to a regrettable lack of national consistency that could confuse users and present barriers to wider use”.¹²⁵

166. While the RTPI Cymru supported the principle of statutory HERs, it had “serious concerns” about resource implications for local authorities and others. It went on to state that “additional costs to LPAs may potentially place other elements of the planning service at risk”.¹²⁶ Similar views were expressed by Bridgend County Borough Council.¹²⁷

167. The WLGA was generally content with the statutory duty and the provision for authorities to discharge their HER functions to another body. It regarded this as “formalising” the existing arrangements.¹²⁸ While the WLGA acknowledged that the Bill enables LPAs to maintain their own HERs, it believed this unlikely, particularly given the capacity and resource implications.¹²⁹

168. Although the WLGA agreed that, in principle, “funding should follow the statutory responsibility”, it was content that the WATs would continue to be funded directly by the Welsh Government, given the small amounts involved.¹³⁰

169. According to the National Trust Wales, arrangements for the maintenance of existing records “practically and pragmatically (...) work well”.¹³¹ It stated that the provision enabling LPAs to discharge their functions in respect of HERs was “key” to ensuring the successful continuation of the existing arrangements, which it favoured.¹³² Similar views were expressed by the Welsh Archaeological Trusts and the Royal Commission, with the latter calling for the statutory guidance to make reference to continuation of the existing arrangements as the preferred approach.¹³³

170. Denbighshire County Council called for additional details on governance and scrutiny arrangements relating to WATs to be included either in the Bill or statutory guidance.¹³⁴ Similar views were expressed

¹²⁵ Written evidence, HE 10

¹²⁶ Written evidence, HE 34

¹²⁷ Written evidence, HE 25

¹²⁸ RoP, para 12, 10 June 2015

¹²⁹ RoP, para 12, 126 June 2015

¹³⁰ RoP, para 121, 10 June 2015

¹³¹ RoP, para 278, 18 June 2015

¹³² RoP, para 281, 18 June 2015

¹³³ RoP, para 164, 18 June 2015

¹³⁴ Written evidence, HE 24

by the National Park Authorities, who called for the guidance to clarify a range of issues, including local authority involvement in monitoring and enforcing data content and standards.¹³⁵

Welsh language issues

171. The National Park Authorities noted that “the data held by HERs is predominantly monolingual in English” and called for “further guidance on the implications of bilingual provision for local authorities’ responsibilities towards HERs”.¹³⁶

172. The Welsh Language Commissioner called for the statutory guidance on HERs to “state specifically that the records should be bilingual and of the same standard in Welsh and English in accordance with the requirements that will be made of local authorities under the Welsh Language (Wales) Measure 2011”. She also stated that the guidance should specify “the need to give due attention to the orthographic accuracy and source of the names of the features included in these records and that the Welsh and English names, or the names in both languages if they exist, are published”.¹³⁷

173. She emphasised the need to ensure that the records were correct “not only from a historical point of view, but also from a linguistic point of view” and suggested that “the guidance includes the need to consult with experts on language and place names when creating the historic environment records”.¹³⁸

Evidence from the Deputy Minister

174. According to the Deputy Minister:

“[HERs] provide planning authorities and other decision makers with essential information. They raise awareness of the historic environment at a local level and they provide a resource for public participation for research and for educational activities.”¹³⁹

175. He explained that “the importance of the HERs is not always adequately recognised by those involved in planning applications and decisions”. He believed that placing the records on a statutory footing

¹³⁵ Written evidence, HE 46

¹³⁶ Ibid

¹³⁷ Written evidence, HE 38

¹³⁸ Ibid

¹³⁹ RoP, para 152, 4 June 2015

“will enhance the status and provide them with a more secure future”.¹⁴⁰

176. When questioned on why he believed it was appropriate for the duty to create and maintain HERs to be placed on LPAs, the Deputy Minister stated:

“It’s very telling, isn’t it, that some of the responses to the committee argue (...) that HERs are not particularly relevant to the work of local planning authorities. Of course, this is precisely the attitude that we are trying to counter by placing the duty on local planning authorities (...) Were the duty to be put on Welsh Ministers, that would not enable us to do what we wish to do with HERs, which is to ensure that local authorities recognise the value of them”.¹⁴¹

177. He explained that it would not be possible for the statutory duty to lie with the WATs “because of their charitable status”.¹⁴²

178. Although the Deputy Minister reported there was no compulsion for LPAs to discharge their functions to WATs, he anticipated that LPAs would “utilise the skills” of the WATs. He subsequently stated that, “in most cases, local planning authorities simply do not have the expertise to be able to compile and to properly maintain HERs as required”.¹⁴³

179. The Deputy Minister explained that the WATs were funded by the Welsh Government to enable them to manage HERs and that additional funding would be provided “to make sure that HERs are meeting the benchmarks required for the implementation of the provisions in the Bill”. While the WATs would continue to be funded directly by the Welsh Government, the Deputy Minister’s official stated that any LPA that chose to create and maintain its own HER would have “a proportion” of the funding.¹⁴⁴

180. When questioned about whether HERs would be available bilingually, the Deputy Minister stated it was “generally accepted that the historic archival records [which make up the majority of HERs] are exempt from the current Welsh language scheme”. He was working with the Welsh Government’s Welsh language compliance officer to

¹⁴⁰ RoP, para 152, 4 June 2015

¹⁴¹ RoP, para 304, 8 July 2015

¹⁴² Ibid

¹⁴³ RoP, para 306, 8 July 2015

¹⁴⁴ RoP, para 169, 4 June 2015

consider the implications of the new Welsh language standards on HERs.¹⁴⁵

181. In response to the concerns about the quality and completeness of the existing HERs, the Deputy Minister explained that the Royal Commission had recently completed an audit of the records. This would be followed by the development of a five-year enhancement plan, which “intended to address any identified shortcomings”. He also explained that the Royal Commission would be responsible for monitoring the standards and service levels of HERs. Finally, he explained that funding would be made available to WATs to increase capacity from a part-time officer to a full-time officer in order “to meet the data and service standards that will be placed on the statutory HERs”.¹⁴⁶

182. In commenting generally on historic assets of special local interest, the Deputy Minister stated that it was “key” that these lists “reflect what is important to the communities that the lists refer to”.¹⁴⁷ He explained that there was “variation” between the existing lists, of which there were “seven or eight”. He also explained that the draft guidance, *Managing Lists of Historic Assets of Special Local Interest*, had been developed to help address the variation in quality of existing local lists.¹⁴⁸

183. The Deputy Minister stated that provision for statutory local lists had not been included in the Bill because the cost to local authorities, which was estimated at between £3 million to £3.5 million, would be “prohibitive”.¹⁴⁹

Our view

184. We welcome the provision of statutory HERs. Overall, we have heard that the existing HERs are a valuable tool that help support the sustainable management of the historic environment.

¹⁴⁵ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015

¹⁴⁶ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 16 June 2015, available at:

<http://www.senedd.assemblywales.org/documents/s42722/Correspondence%20from%20the%20Deputy%20Minister%20for%20Culture,%20Sport%20and%20Tourism%20Annexe%201%20-%20Historic%20Environme.pdf>

¹⁴⁷ RoP, para 64, 8 July 2015

¹⁴⁸ RoP, para 66-68, 8 July 2015

¹⁴⁹ RoP, para 68, 8 July 2015

185. We acknowledge the view of some respondents that it is neither reasonable nor appropriate for the statutory duty to create and maintain HERs to lie with local planning authorities. While we have some sympathy with this view, the Deputy Minister has made clear that the intended effect of placing the statutory duty with LPAs is to encourage them to better utilise the records in the delivery of planning services.

186. We have heard evidence that significant financial investment will be required if authorities are to create their own HERs. In the absence of any additional funding from the Welsh Government, it is clear that the cost to authorities of this will be prohibitive, particularly in the context of current financial constraints. As such, the ability of local planning authorities to meet their statutory duty in respect of HERs is entirely dependent on the continuation of current arrangements (whereby the records are managed by the Welsh Archaeological Trusts), which would be possible under the terms of the Bill. Given this, and that the WATs are keen for the continuation of existing arrangements, we believe that the Bill's provisions provide a pragmatic approach to the delivery of statutory HERs. As such, we are satisfied that the proposed duty to create and maintain HERs will be placed on local planning authorities.

187. The evidence we have received suggests that uncertainty remains, particularly across local authorities, as to how the arrangements for discharging their HER functions will work in practice. We expect this matter to be clearly addressed in the statutory HER guidance. While we have not considered the draft guidance in detail as part of our scrutiny of the Bill, we believe it will be central to the effective delivery of statutory HERs. We draw the Deputy Minister's attention to the evidence received in relation to the content of the guidance and urge him to consider this when finalising it.

On the issue of bilingual HERs, we recommend that the Deputy Minister clarifies whether the requirements on local authorities to comply with standards under the Welsh Language Measure 2011 will apply to the provision of HERs, including in instances where authorities choose to discharge their HER functions.

188. We acknowledge the importance of Lists of Historic Assets of Special Local Interest ('Local Lists') and the need to protect and enhance historic assets that are deemed important by our communities. Local lists provide an important opportunity for communities to get involved in the identification and management of

these assets, and more generally provide a means for communities to engage with the historic environment.

189. In view of the above, we were disappointed to hear that so few authorities have chosen to adopt a Local List. We welcome the introduction of the guidance, *Managing Lists of Historic Assets of Special Local Interest*, but we believe that more should be done to increase the number of authorities in Wales that have Local Lists.

190. We acknowledge that provision of statutory Local Lists will have financial and resource implications, however, unless they are given statutory status, it is unlikely that this aim will be achieved. **We recommend that the Bill is amended to require local authorities to prepare and maintain lists of historic assets of special local interest and that the Deputy Minister brings forward an amendment at Stage 2 to give effect to this.**

8. Heritage Partnership Agreements

Background

191. Sections 11 and 28 make provision for Heritage Partnership Agreements ('HPAs') in Wales. These statutory agreements will allow owners and other interested parties of several historic assets to agree a programme of long-term works for their asset with the LPA or the Welsh Ministers without having to apply for listed building consent ('LBC') or scheduled monument consent ('SMC') for each individual case.

192. The proposed HPAs would be between the owner or interested party of a historic asset, and either the LPA (for listed buildings) or with Welsh Ministers (for scheduled monuments).

Evidence from respondents

193. There was broad support in evidence for the proposals to introduce HPAs. There was general consensus that owners of large estates containing several listed buildings or scheduled monuments would benefit from having one agreement in place which would permit them to carry out a broad range of work to their historic assets.

194. According to the National Trust Wales, HPAs could "cut through a lot of bureaucracy that is holding up profitable use of complex landscapes where there are different designations" and had the potential to enable effective partnerships between owners of historic assets, LPAs and Welsh Ministers.¹⁵⁰

195. While the proposals for HPAs were broadly welcomed, many respondents were unsure as to how often the agreements would be used in practice, particularly in view of the current financial challenges facing local government. The WLGA and other local authority representatives, including Powys County Council, reported that the establishment of HPAs was likely to be resource intensive and involve significant up-front costs for authorities.¹⁵¹ They raised doubt about the lack of capacity and expertise within some authorities to enter into agreements.

¹⁵⁰RoP, para 271, 18 June 2015

¹⁵¹ Written evidence, HE 06, HE 40

196. While recognising that there was no requirement for LPAs to enter into HPAs, the WLGA sought clarification about the grounds on which an authority could decline to enter into an agreement.¹⁵²

197. Bridgend County Council was concerned about the risk of different interpretations of the content of an HPA, given that the longevity of the agreements would significantly reduce the current level of contact between the historic asset owners and local authorities or the Welsh Ministers.¹⁵³

198. Denbighshire County Council highlighted the need for additional guidance, and a template for agreements,¹⁵⁴ while the RTPI Cymru felt that “good practice notes would be useful for all parties involved” in the implementation of HPAs.¹⁵⁵

199. Respondents from religious organisations, including Cytun – Churches Together in Wales and the Church in Wales, sought clarification on whether exempt denominations¹⁵⁶ could enter into HPAs, with the latter stating that the Bill “should not preclude exempt denominations from entering these agreements by virtue of the Exemption provisions.”¹⁵⁷

Evidence from the Deputy Minister

200. The Deputy Minister stated that the introduction of HPAs would “simplify processes for the sustainable management of the historic environment”.¹⁵⁸

201. In responding to the suggestion in evidence that agreements were unlikely to be used much in practice, he stated that “it is difficult to predict the likely numbers and the likely demand for heritage partnership agreements.”¹⁵⁹ In his view, the demand for, and use of, HPAs would increase over time and with increased awareness among stakeholders of the potential benefits of agreements.

¹⁵² Written evidence, HE 06

¹⁵³ Written evidence, HE 25

¹⁵⁴ Written evidence, HE 24

¹⁵⁵ Written evidence, HE 34

¹⁵⁶ Under the Planning (Listed Buildings and Conservation Areas) Act 1990, several places of worship are exempt from listed building consent; due to their religious purpose they have their own internal control procedures.

¹⁵⁷ Written evidence, HE 30

¹⁵⁸ RoP, para 85, 4 June 2015

¹⁵⁹ RoP, para 134, 4 June 2015

202. The Deputy Minister confirmed that participation in HPAs would be entirely voluntary and did not believe it was appropriate to include any mechanism for review or appeal.¹⁶⁰

203. The Deputy Minister explained that best practice guidance on HPAs would be published and would take account of experiences of the recent pilots in England.¹⁶¹ In his view, these pilots provided evidence that, although there were initial cost and resource implications in the set-up of agreements, overall, savings were made through long-term management of consent procedures.¹⁶²

204. The Deputy Minister confirmed that ecclesiastical buildings could be the subject of heritage partnership agreements.¹⁶³ His official went on to suggest that there would be “no need, in effect” for certain religious denominations to enter into an HPA in respect of ecclesiastical buildings if they were already exempt from the building consent process.¹⁶⁴

Our view

205. We recognise the potential long-term cost and resource savings that could result from the introduction of Heritage Partnership Agreements. However, against the background of the current financial challenges facing local government, in our view it appears unlikely that local planning authorities will utilise the power to enter into agreements without the appropriate support from the Welsh Government, particularly given their voluntary status.

206. The Deputy Minister referred to the HPA pilots in England as examples of good practice. **We recommend that the Deputy Minister should raise awareness among local authorities in Wales of the advantages of using HPAs to encourage them to explore the use of agreements. This should be done through promotion of good practice identified through the HPA pilots in England.**

¹⁶⁰ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015

¹⁶¹ Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78120/hrp_breport_eightpilotprojects.pdf

¹⁶² Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015

¹⁶³ RoP, para 296, 8 July 2015

¹⁶⁴ RoP, para 301, 8 July 2015

207. We agree with the views from respondents about the importance of guidance for authorities wishing to make use of their powers to enter into HPAs. As such, we welcome the Deputy Minister's intention to provide guidance for authorities alongside the provisions in the Bill. While this should go some way in facilitating the delivery of agreements, **we recommend that additional support from the Welsh Government should be made available to authorities who show willingness to enter into HPAs. This should include practical support in the early development of these agreements.**

9. Advisory Panel for the Welsh Historic Environment

Background

208. Sections 37 and 38 make provision for an Advisory Panel for the Welsh Historic Environment sector ('the Panel'), which will be established by the Welsh Ministers. Section 37 also requires the Panel to submit a three-year work programme to the Welsh Ministers before each financial year setting out the areas on which it plans to advise the Welsh Ministers during that period. Once approved by the Welsh Ministers, the work programme is to be made publicly available.

Evidence from respondents

209. There was broad support for the provisions to establish an Advisory Panel for the historic environment sector. Respondents generally felt that a panel of specialists from both within and outside the sector to advise the Welsh Ministers could be of significant benefit, if it remained independent of the Welsh Government. On this point, the Welsh Archaeological Trusts stated:

“We would hope that, as well as having historic environment specialists within the panel, it will also have the ability to challenge the sector, and that it could bring in people with wider expertise and knowledge on, for example, sustainability, access, inclusivity, and perhaps also, then, promotion of the historic environment.”¹⁶⁵

210. However, both Civic Trust Cymru and the National Trust suggested that the estimated annual cost of £50,000 for the Panel was high when considering the current financial climate for public services. The National Trust suggested that “consideration could be given to how else this money might be used”.¹⁶⁶

Risk of duplication with other bodies

211. A number of respondents who commented on the proposed Panel, including the National Park Authorities, sought clarification on the exact role of the Panel and called for clearly defined terms of reference. Other respondents, including the Chartered Institute of

¹⁶⁵ RoP, para 216, 10 June 2015

¹⁶⁶ Written evidence, HE 09

Archaeologists and the National Trust Wales highlighted the risk of duplication between the work of the Panel and other bodies, such as the existing Historic Environment Group ('HEG'). The Trust suggested that further consideration should be given to the roles of the Panel and the HEG in order to minimise this risk.¹⁶⁷

Panel membership and independence

212. There was general consensus that the Panel membership should be broadly drawn and that it should reflect the diverse nature of the historic environment sector. Some respondents believed that this approach would help avoid duplication with the HEG.

213. The Welsh Archaeological Trusts believed that the Panel could also benefit from input from outside the historic environment sector, including outside Wales and the UK, to give a wider strategic viewpoint.¹⁶⁸ Similar views were expressed by NRW.¹⁶⁹

214. Specific suggestions for representation on the Panel included: religious communities, environmental organisations, representation for non-listed traditional buildings, private owners, an expert in historic place names, and amenity societies.

215. There was a strong view that the Panel should remain entirely independent from the Welsh Government to ensure that it provided effective and impartial advice on matters relating to the sector. A number of respondents commented that the recruitment process for the Panel could be a way of achieving this. The Isle of Anglesey County Council reported that the appointment of Panel members by the Welsh Ministers could impact on its likely independence.

Monitoring and reporting arrangements

216. Several respondents, including the National Trust Wales, were concerned about, or sought clarification on, how the success of the Panel would be measured, with some suggesting that the annual work

¹⁶⁷ RoP, para 286, 18 June 2015

¹⁶⁸ Written evidence, HE 02a

¹⁶⁹ Written evidence, HE 27

programme¹⁷⁰ provided for in the Bill was an insufficient measure of the Panel's work and outputs.¹⁷¹

217. A number of respondents, including Isle of Anglesey County Council and the IHBC emphasised the importance of transparency for the Panel's reporting methods in order for its work to be understood by the public as well as by the Welsh Ministers.¹⁷² While the Wales Heritage Group noted that the Bill places no requirements on the Panel to publish its outputs, the Isle of Anglesey County Council stated that "this should be considered a statutory obligation".¹⁷³

218. Other respondents agreed that a formal reporting mechanism for the Panel would be important in order to effectively measure its outputs.

Evidence from the Deputy Minister

The Deputy Minister stated that the Panel "seeks to complement the work of the historic environment group, which is composed of representative stakeholder groups, as opposed to individual experts offering individual technical expertise."¹⁷⁴

219. Further to this, he provided additional information to illustrate the differences between the two groups. He confirmed that, whilst there was no formal appointment process for the HEG, members of the Panel will be appointed "through open advertisement and competition" by the Welsh Government.¹⁷⁵

220. On the issue of independence, the Deputy Minister stated that placing the Panel on a statutory basis would ensure its stability and longevity as well as "make it far harder for the body to become politicised, thereby ensuring that it remains independent".¹⁷⁶

¹⁷⁰ Section 37 requires the Panel to submit a three-year work programme to the Welsh Ministers before each financial year setting out the areas on which it plans to advise the Welsh Ministers during that period. Once approved by the Welsh Ministers, the work programme is to be made publicly available.

¹⁷¹ RoP, para 286, 18 June 2015

¹⁷² Written evidence, HE 29, HE 21

¹⁷³ Written evidence, HE 21

¹⁷⁴ RoP, para 184, 4 June 2015

¹⁷⁵ Correspondence from the Deputy Minister for Culture, Sport and Tourism (Annexe 2), 16 June 2015, available at:

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12573>

¹⁷⁶ RoP, para 184, 4 June 2015

221. The Deputy Minister explained that the work of the Panel would be monitored and evaluated against its forward work programme.¹⁷⁷ While he was “satisfied” with this arrangement, he agreed to further consider a formal reporting mechanism, subject to any recommendation made by the Committee.¹⁷⁸

Our view

222. We note the concerns of respondents about the risk of duplication between the role of the proposed Advisory Panel and the existing HEG. However, we were persuaded by the Deputy Minister’s evidence that they will be sufficiently distinct and that the Panel will complement the work of the HEG.

223. However, we have concerns about the reporting mechanism for the Panel. We believe it is important that an appropriate reporting mechanism, more rigorous than the Panel’s forward work programme, is in place to enable effective evaluation of performance and cost-benefit analysis. There is a clear need to demonstrate that value for money is being achieved, particularly given the views of some respondents about the estimated annual cost of the Panel.

We recommend that the Bill includes a requirement on the Advisory Panel for the Welsh Historic Environment to report to the Welsh Ministers annually on work undertaken and outputs achieved, and to make these reports publicly available.

¹⁷⁷ RoP, para 188, 4 June 2015

¹⁷⁸ Correspondence from the Deputy Minister for Culture, Sport and Tourism, 21 July 2015