



Llywodraeth Cymru
Welsh Government

Historic Environment (Wales) Bill

Explanatory Memorandum
incorporating the Regulatory Impact
Assessment and Explanatory Notes

1 May 2015

Historic Environment (Wales) Bill

Explanatory Memorandum to the Historic Environment (Wales) Bill

This Explanatory Memorandum has been prepared by Cadw, the Welsh Government's historic environment division, and is laid before the National Assembly for Wales.

Member's Declaration

In my view, the provisions of the Historic Environment (Wales) Bill introduced by me on 1 May 2015 would be within the legislative competence of the National Assembly for Wales.

Ken Skates AM
Deputy Minister for Culture, Sport and Tourism

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List of abbreviations

1979 Act — Ancient Monuments and Archaeological Areas Act 1979

1990 Act — Planning (Listed Buildings and Conservation Areas) Act 1990

COI — Certificate of immunity from listing

HEG — Historic Environment Group

HER — Historic environment record

HPA — Heritage partnership agreement

LBC — Listed building consent

LPA — Local planning authority

RCAHMW — Royal Commission on the Ancient and Historical Monuments of Wales

RIA — Regulatory impact assessment

SMC — Scheduled monument consent

TSN — Temporary stop notice

WAT — Welsh archaeological trust

Historic Environment (Wales) Bill provisions in the Explanatory memorandum and Regulatory impact assessment

Provision	Bill section/s	Explanatory Memorandum	Regulatory Impact Assessment
Measures to introduce greater accountability and transparency			
Establishment of an advisory panel for the Welsh historic environment	37–38	pp. 11–13	pp. 102–105
Consultation, interim protection and review for designations	3–4 and 24–26	pp. 13–15	pp. 53–57
Measures to enable the Welsh Government and local authorities to give more effective protection to the historic environment			
Extension of the definition of a scheduled monument	22	pp. 16–17	pp. 76–81
Amendments to the criminal offences and defences relating to scheduled monuments	15–17	pp. 17–19	pp. 64–68
Introduction of enforcement and temporary stop notices for scheduled monuments	12–13	pp. 19–22	pp. 61–64
Powers of entry for the archaeological investigation of an ancient monument in imminent danger of damage or destruction	19	pp. 22–23	pp. 74–76
Creation of a statutory register for historic parks and gardens	18	pp. 24–25	pp. 68–74
Extension of the scope of urgent works to listed buildings and the recovery of costs through the introduction of local land charges	30	pp. 26–29	pp. 93–97
Introduction of temporary stop notices for listed buildings	29	pp. 29–31	pp. 90–93
Measures to enhance existing mechanisms for the sustainable management of the historic environment			
Requirement for local planning authorities to create and maintain historic environment records	33–36	pp. 31–33	pp. 98–101
Introduction of heritage partnership agreements	11 and 28	pp. 33–37	pp. 85–90
Modifications to the scheduled monument consent process	5–10	pp. 37–39	pp. 57–61
Relaxation of the conditions for an application for a certificate of immunity from listing	27	pp. 39–40	pp. 82–85

Part 1 — Explanatory memorandum

Section 1: Description

1. The Historic Environment (Wales) Bill forms part of a suite of legislation, policy, advice and guidance that makes important improvements to the existing systems for the protection and sustainable management of the Welsh historic environment. In broad terms, the Bill gives more effective protection to listed buildings and scheduled monuments, enhances existing mechanisms for the sustainable management of the historic environment, and introduces greater transparency and accountability into decisions taken on the historic environment.
2. The Bill creates new measures that:
 - allow the Welsh Ministers to put an immediate halt to unauthorised works to scheduled monuments and make it easier for action to be taken against those who have damaged or destroyed monuments;
 - enable authorities to act quickly if a listed building is under threat from unauthorised works and give them greater flexibility in dealing with historic buildings that require urgent works to protect them from further decay;
 - make it easier for owners or developers to create sustainable new uses for unlisted historic buildings by relaxing the conditions for applications for certificates of immunity from listing;
 - create a statutory register of Wales' historic parks and gardens;
 - allow owners of historic assets to negotiate partnership agreements with consenting authorities for a period of years, eliminating the need for repeated consent applications for similar works and encouraging more consistent and coherent management of the buildings or monuments;
 - secure a more stable future for Wales' historic environment records, which provide detailed information and advice on the historic environment to local planning authorities and the public;
 - make existing structures for the designation of nationally important historic assets more open and transparent by introducing formal consultation with owners and establishing a mechanism to review decisions; and
 - establish an independent panel to advise on historic environment policy and strategy at a national level in Wales.

Section 2: Legislative background

3. The National Assembly for Wales ('the Assembly') has the legislative competence to make provision in the Historic Environment (Wales) Bill pursuant to Part 4 of the Government of Wales Act 2006. The relevant provisions of the Government of Wales Act 2006 are set out in section 108 and Schedule 7.
4. Paragraphs 2, 3, 6 and 18 of Schedule 7 set out the following subjects on which the Assembly may legislate.
 - Ancient monuments and historic buildings
 - Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.
 - Culture
 - Archives and historical records.
 - Environment
 - Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty).
 - Town and country planning
 - Town and country planning, including listed buildings and conservation areas...Spatial planning...Protection of visual amenity.

Section 3: Purpose and intended effect of the legislation

Wales' historic environment — a precious and fragile resource

5. The face of Wales has been shaped by thousands of years of human activity. Ancient monuments and historic buildings are prominent features of town and countryside and in every corner of Wales the landscape itself yields evidence of the lives and labours of our forebears.
6. This historic environment is a precious and irreplaceable legacy for the nation. It has left an unmistakeable imprint on our national culture and identity and contributes to local distinctiveness and community pride. The historic environment furnishes the backdrop for the day-to-day life, work and leisure of the people of Wales, generating a sense of place and belonging that contributes to well-being. It also provides children and adults with educational opportunities that help them gain knowledge and skills that will enhance their lives and enable them to fulfil their potential at school and in the workplace.
7. In addition to the cultural, social and environmental benefits that the historic environment brings to the people of Wales, it also makes a substantial contribution to the nation's economy. According to recent research, it supports over 30,000 jobs and adds around £840 million to Wales' Gross Value Added. It has been estimated that the historic environment and historic attractions account for one-fifth of total tourism expenditure in Wales.¹
8. The historic environment has also been recognised as a powerful catalyst for regeneration in both urban and rural areas. Historic buildings often provide the focus or setting for regeneration projects. The historic environment can, therefore, be an important factor in strengthening community confidence and attracting inward investment to stimulate development and economic growth.²
9. If the historic environment is a precious resource, it is also a fragile one. A careless or unwitting act can destroy or irreparably damage a site that has survived for centuries, even millennia. Even small changes, seemingly insignificant in themselves, can gradually accumulate to erode and eventually obscure the historic nature of a venerable building or even an entire area. Such losses impoverish our surroundings, threatening the richness and variety of the historic environment that contributes to the individual distinctiveness of Wales' communities and proves so attractive to visitors.
10. The historic environment must be protected so present and future generations of Welsh citizens and visitors to our nation can continue to be inspired by it, learn from it and enjoy its many benefits. However, it cannot be frozen in time. At the most basic level, change is inevitable since the passage of years will take its toll on even the most substantial monuments or buildings. More importantly, the historic environment is under pressure as patterns of land use, consumer behaviour and religious observance change in twenty-first-

¹ ECOTEC Research and Consulting Ltd, *Valuing the Welsh Historic Environment* (2010), p. 8.

² Welsh Government, *Vibrant and Viable Places: New Regeneration Framework* (2013), pp. 20, 25.

century Wales. If it is going to respond to the requirements of modern life and meet the challenges of the future without losing its special qualities, the historic environment will need to be carefully and sustainably managed.

The existing framework for the protection and management of the Welsh historic environment

11. The current framework for the protection and management of the Welsh historic environment rests, in the main, upon two pieces of UK legislation.
12. The Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act') provides for the designation and protection of scheduled monuments of national importance by the Welsh Ministers and makes it an offence to damage a scheduled monument or undertake works without the Welsh Ministers' formal consent. There are currently over 4,000 scheduled monuments in Wales.
13. The Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act') gives the Welsh Ministers powers to designate listed buildings of special architectural or historic interest. It also sets out a consent procedure for permitted works to listed buildings, establishes offences for unauthorised works and furnishes mechanisms for enforcement actions. In addition, the 1990 Act places a responsibility on local planning authorities ('LPAs') to designate areas of special architectural or historic interest as 'conservation areas' and periodically review them. Nearly 30,000 Welsh buildings have been listed and LPAs have designated 523 conservation areas.
14. Other elements of the historic environment that do not receive specific statutory protection — for instance, registered historic parks and gardens — are given consideration during the planning process in line with the Welsh Government's current policy and guidance.
15. The Welsh Government's high-level land use planning policies are set out in *Planning Policy Wales* (July 2014). Chapter 6 — 'Conserving the Historic Environment' details planning policy for the historic environment as it relates to the preparation of local development plans and decisions on applications for planning consent, conservation area consent and listed building consent.
16. This policy is currently augmented by three Welsh Office circulars:
 - Circular 60/96 — Planning and the Historic Environment: Archaeology
 - Circular 61/96 — Planning and the Historic Environment: Historic Buildings and Conservation Areas
 - Circular 1/98 — Planning and the Historic Environment: Directions by the Secretary of State for Wales
17. While much of the guidance that they contain is still valid, these three circulars are nearly two decades old and need to be updated.

18. During wide-ranging engagement and consultation exercises undertaken in 2012–2013, there was little appetite for radical change to the present systems for safeguarding the Welsh historic environment. Participants generally felt that the existing legislative structures are fundamentally sound, but identified areas where protection could be enhanced or management improved. These views have shaped the development of the proposals for the Historic Environment (Wales) Bill.

The Historic Environment (Wales) Bill

19. The Programme for Government, the Welsh Government’s five-year strategic plan issued in 2011, made a commitment to introduce a ‘Heritage Protection Bill’ as a central means to realise the aim to ‘enrich the lives of individuals and communities through culture and heritage’. The Historic Environment (Wales) Bill represents the fulfilment of that commitment.
20. A number of the Bill’s provisions depend upon subordinate legislation or statutory guidance for implementation. A policy intent paper is being published alongside the Bill to outline detailed implementation matters. These include:
- regulations relating to consultation on the designation of historic assets and to requests for the Welsh Ministers to review a designation decision;
 - regulations pertaining to measures to simplify the scheduled monument consent process;
 - regulations relating to operational requirements of heritage partnership agreements;
 - regulations governing additional disqualifications for membership of the Advisory Panel for the Welsh Historic Environment; and
 - regulations permitting the amendment of the definition of a historic environment record.
21. A draft of the statutory guidance on the management of historic environment records for which the Bill provides will accompany the policy intent statement on historic environment records.
22. Moreover, the Historic Environment (Wales) Bill will be complemented by policy, advice and guidance that will reflect the Bill’s measures and make additional improvements to the existing systems for the protection and sustainable management of the Welsh historic environment. Amongst these will be:
- a revised chapter 6 — ‘The Historic Environment’ — of *Planning Policy Wales*;
 - a new planning technical advice note for the historic environment that will supersede outdated Welsh Office Circulars 60/96, 61/96 and 1/98; and
 - a suite of guidance documents that will include the following titles:
 - Managing Change to Listed Buildings in Wales;
 - Managing Change in World Heritage Sites in Wales; and

- Managing Lists of Historic Assets of Special Local Interest.

23. Prior to any formal consultation, these supplementary documents have been supplied in draft form for consideration alongside the Bill.

Aims

24. The Historic Environment (Wales) Bill aims to:
- introduce greater transparency and accountability into decisions taken on the historic environment;
 - give more effective protection to listed buildings and scheduled monuments; and
 - enhance existing mechanisms for the sustainable management of the historic environment.
25. Apart from two pieces of stand-alone legislation, the Bill's provisions involve amendments to the 1979 and 1990 Acts. The three principal aims of the Bill form the main headings for the presentation of the provisions below.

Measures to introduce greater transparency and accountability

Establishment of an advisory panel for the Welsh historic environment (sections 37–38)

Background

26. There has never been a body with appointed members to advise the Welsh Ministers on historic environment policy and the development and delivery of strategic programmes of work. The Ancient Monuments Advisory Board and the Historic Buildings Advisory Council provided advice on particular aspects of casework, but these were discontinued in 2010. The Historic Environment Group ('HEG'), established in 2004, comprises nominated representatives from across the historic environment sector and acts as a forum for stakeholder communication and coordinated action.

Current position

27. Cadw (the historic environment division of the Welsh Government), the Royal Commission on the Ancient and Historical Monuments of Wales ('RCAHMW') and other organisations that receive government funding for work relating to the historic environment of Wales undertake a variety of functions covering three related areas of activity.

- Knowledge — the advancement of understanding of the historic environment, including programmes of investigation, excavation and survey.
- Conservation — the protection and sustainable management of the historic environment.

- Public engagement — the promotion and interpretation of the historic environment and the provision of public access, including programmes of active public participation and learning in conservation and discovery.

It is essential that all of the organisations concerned develop and implement coordinated works programmes and work together to deliver shared objectives.

28. The Welsh Ministers have challenging statutory responsibilities for heritage protection and management, and have an important role in developing programmes of lifelong learning, skills development, public participation and product/monument development. Many of these themes cut across the conservation, knowledge and public engagement agendas identified above and all contribute to the Welsh Government's six well-being goals for a sustainable Wales.³ New and stimulating perspectives on how the historic environment sector can contribute to these challenging outcome-focused priorities are needed, especially where expertise within the Welsh Government is limited. There is, however, no body that can provide independent, expert advice on the historic environment to the Welsh Ministers.

Purpose of the provisions

29. The provisions place a duty on the Welsh Ministers to establish the 'Advisory Panel for the Welsh Historic Environment'. The new independent panel will complement the work of HEG and provide expert advice to the Welsh Ministers on the formulation, development, resourcing and delivery of historic environment policy and strategy.
30. The new panel will have a broad remit to provide advice on a variety of activities relating to the historic environment of Wales and assets of historical, architectural or archaeological interest. It is anticipated that this will include, but not necessarily be limited to:
- expert advice on the development of historic environment policy and how this might contribute to wider government priorities and the six well-being goals for a sustainable Wales;
 - expert advice to inform the development of strategic plans for the historic environment sector;
 - expert advice on the balance of resource allocation between the three core activity areas — knowledge, conservation and public engagement; and
 - expert advice, guidance and challenge for those who deliver public historic environment services at a national level in Wales.
31. The panel is also likely to have a role in reporting to the Welsh Ministers on the delivery of the strategic plans for the Welsh historic environment.
32. The panel will prepare a regular three-year forward work programme covering the three core areas of activity and submit it to the Welsh Ministers for approval.

³ Set out in the Well-being of Future Generations (Wales) Bill.

33. Appointments to the panel will be made in line with the Nolan Principles and the Code of Practice for Ministerial Appointments to Public Bodies, and the Panel will not exceed 15 members. The Welsh Ministers will provide staff, accommodation and facilities in order to allow the panel to carry out its functions.

Intended effect of the provisions

34. By establishing the statutory Advisory Panel for the Welsh Historic Environment, these provisions ensure that the Welsh Ministers will be able to obtain independent, expert advice on a range of matters relating to the formulation, development and implementation of policy and strategy in relation to the historic environment of Wales.

Consultation, interim protection and review for designations (sections 3–4 and 24–26)

Background

35. Under the 1979 Act, the Welsh Ministers are required to compile and maintain a schedule of monuments ('the Schedule') that meet certain published criteria and that they deem to be of national importance.
36. Similarly, under the 1990 Act, the Welsh Ministers have a statutory duty to compile a list of buildings of special architectural or historic interest. While scheduling is discretionary, the Welsh Ministers have no option to exclude a building from the list if it meets published criteria.
37. Once designated, scheduled monuments and listed buildings are subject to consent regimes under which owners and occupiers must obtain formal authorisation for specified works. The requirement for consent serves to safeguard nationally important assets from changes that may damage or destroy their interest or character.

Current position

Scheduled monuments

38. There is no requirement for the Welsh Ministers to consult with owners before making a decision to add a monument to the Schedule. However, in practice, the Welsh Ministers routinely consult any owners and occupiers who can be identified, unless such consultation would place a monument at risk of damage or destruction. The relevant LPA and other public bodies with a specialist interest are also informed of the proposal. The duty to inform owners of a decision to amend the Schedule rests with the Welsh Ministers. In those cases where it is not possible to trace the owner/occupier, a bilingual notice is placed on the site in a process known as 'scheduling by proclamation'.

Listed buildings

39. The Welsh Ministers have traditionally consulted LPAs and other public bodies with a specialist interest when considering proposals for listing. There is, however, no statutory requirement for the Welsh Ministers to consult with owners or occupiers before making a decision to add a building to the list.
40. Since 2005, the Welsh Ministers have, in fact, consulted owners and occupiers on all listing proposals, unless there is a real risk that such consultation might provoke damage to or destruction of a building before a decision on the listing can be made. The consultation period is open for 28 days and any comments are considered before a decision is taken. The duty to inform owners of a decision to list rests with the LPA, but it has been the practice for the Welsh Ministers to provide informal notice at the point of listing.
41. Buildings are not generally subject to any additional protection while they are being considered for listing. However, if an LPA considers that an unlisted building of special architectural or historic interest is in danger of alteration or demolition, it can serve a building preservation notice on the owner and occupier which remains in force for 6 months.

Inadequacies of the present systems

42. Once a building or monument has been designated, there is no statutory right to request a review of the decision of the Welsh Ministers, although it may be challenged by judicial review. However, the Welsh Ministers will entertain a substantive request for the reconsideration of a decision; such a request might, for instance, present additional evidence that was not previously considered.
43. The absence of any statutory rights for owners and occupiers to be consulted on designation decisions or to request a review of such decisions is hard to reconcile with natural justice or the need for transparency and accountability in decisions that affect people directly. It is also out of step with the principle endorsed by the Welsh Government that everyone should have the opportunity to participate in decisions on the historic environment by means that are accessible, inclusive and informed.⁴
44. However, the introduction of a formal consultation process would need to be supplemented by interim protection to prevent historic assets from being damaged or destroyed during the consultation period.

Purpose of the provisions

Scheduled monuments

45. The provisions amend the 1979 Act to place a duty on the Welsh Ministers to consult with appropriate persons, including the owner, when proposing to add,

⁴ *Conservation Principles for the sustainable management of the historic environment in Wales* (Cadw, 2011), p. 13.

remove or make a material amendment to an entry in the Schedule. An amendment is considered material if it adds to or reduces the scheduled area.

46. The Bill also introduces interim protection, so that the provisions of the 1979 Act will apply to a monument as if already scheduled during the period of the consultation. Furthermore, it gives an owner or occupier the right, in certain circumstances, to request that the Welsh Ministers review a decision to schedule a monument or to make a material amendment to an entry relating to a monument in the Schedule.
47. The Welsh Ministers may appoint a person to undertake such a review. It is anticipated that the Planning Inspectorate will undertake these reviews on behalf of the Welsh Ministers.

Listed buildings

48. Amendments to the 1990 Act put comparable measures in place for listed buildings. The Welsh Ministers must consult with the owner and other appropriate persons when proposing to add or remove an entry on the list of buildings of special architectural or historic interest. During the consultation period, a proposed building will receive interim protection as if already listed under the 1990 Act.
49. The provisions accord owners and occupiers the right, in certain circumstances, to request that the Welsh Ministers review the decision to list a building.
50. The Welsh Ministers may appoint a person to undertake such a review. It is anticipated that the Planning Inspectorate will undertake these reviews on behalf of the Welsh Ministers.

General

51. The provisions provide for the payment of compensation if the imposition of interim protection occasions direct loss or damage and the Welsh Ministers decide not to proceed with the proposed designation.
52. The provisions also oblige the Welsh Ministers to publish by electronic means a list containing particulars of each historic asset that is given interim protection. To support this duty, the Welsh Government is developing a publicly accessible, map-based, online database that, amongst other information, will furnish details on any building or monument given interim protection. This online resource will be available before the provisions pass into law.

Intended effect of the provisions

53. The provisions will make the designation of historic assets transparent and accountable by formally involving owners and others in the decision-making process and providing a mechanism for the review of designation decisions. The introduction of interim protection will safeguard historic assets from damage or destruction during the consultation period.

Measures to enable the Welsh Government and local authorities to give more effective protection to the historic environment

Extension of the definition of a scheduled monument (section 22)

Background

54. Over 4,000 sites in Wales have been designated as scheduled monuments of national importance in line with published criteria. They include a range of monuments from archaeological sites completely buried below ground, through the standing ruins of Wales' great medieval castles and monasteries, to military structures from the time of the Cold War. Scheduling provides these monuments with protection from unauthorised works or damage.

Current position

55. For the purposes of scheduling, the 1979 Act currently defines a monument as:
- (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
 - (b) any site comprising the remains of any such building, structure or work or of any cave or excavation; and
 - (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a) above;
- and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.⁵⁵
56. As archaeological knowledge has increased and techniques for the recovery of evidence about the past have improved, it has become clear that this definition excludes from scheduling sites that preserve invaluable archaeological evidence for past human activity, yet show no traces of structures or works. Important prehistoric sites, for example, may be nothing more than scatters of artefacts.

Purpose of the provisions

57. The provisions broaden the scope of scheduling by allowing the Welsh Ministers to designate a wider range of nationally important sites that furnish archaeological evidence of past human activity.
58. These provisions are particularly important for affording protection to those rare and fragile sites that provide evidence of Wales' earliest past, but they can also be applied to sites from later periods, such as historic battlefields or industrial waste tips.
59. Although the new definition will be applied primarily to terrestrial monuments, it can also be extended to maritime contexts to cover, for instance, sites of

⁵⁵ Section 61(7) of the 1979 Act.

prehistoric activity inundated by rising sea levels or spreads of debris from unlocated wrecks.

60. While the Welsh Ministers will enjoy wider discretion to schedule 'any thing, or group of things, that evidences previous human activity', a significant increase in the number of scheduled monuments in Wales is not expected. The Welsh Ministers will only employ the extended definition to give protection to sites of national importance that fulfil the published criteria.
61. It is estimated that fewer than 30 sites from all periods in Wales are likely to be eligible for scheduling under the extended definition.

Intended effect of the provisions

62. By extending the definition of a monument to encompass 'any thing, or group of things, that evidences previous human activity', the provisions will enable the Welsh Ministers to use scheduling to recognise and protect the full range of nationally important archaeological sites in Wales.

Amendments to the criminal offences and defences relating to scheduled monuments (sections 15–17)

Background

63. The arrangements for the protection of ancient monuments⁶ are set out under three separate sections of the 1979 Act. Each section establishes the offences for contravention and the defences available to a person accused of an offence. Under each of the three sections, the accused is permitted to employ what is widely known as 'a defence of ignorance'.
64. The first section⁷ makes it an offence for a person to execute, cause or permit to be executed specified works to a scheduled monument unless scheduled monument consent ('SMC') has been obtained from the Welsh Ministers. In unauthorised works cases, the Act allows the defence that the accused did not know and had no reason to believe that the monument was scheduled or located in the area of the works.
65. The second section⁸ establishes that a person who, without lawful excuse, damages or destroys a protected monument commits an offence if that person knew the monument was protected and intended to destroy or damage it or acted in reckless disregard of the monument's protected status. A person accused of an offence under this section must be shown to have

⁶ The 1979 Act (Section 61(12)) defines an 'ancient monument' as 'any scheduled monument and any other monument which in the opinion of the Welsh Ministers is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.'

⁷ Section 2 of the 1979 Act.

⁸ Section 28 of the 1979 Act. A protected monument is any scheduled monument and any monument under the ownership or guardianship of the Welsh Ministers or a local authority under the provisions of the 1979 Act.

known that the monument was protected, so a defence that the status of the monument was not known is implicit.

66. The third section⁹ makes it an offence to use metal-detecting equipment on a protected monument without written consent from the Welsh Ministers. A charge of unlawfully using a metal detector on a protected site can be met with the defence that the accused had taken all reasonable steps to ascertain if the site was protected and did not believe that it was.
67. Any person guilty of an offence under these sections of the Act is liable to a fine or even, in some circumstances, imprisonment.

Current position

68. Successful prosecutions of those who damage or carry out unauthorised works to a monument can provide a valuable deterrent. When incidents occur, the Welsh Ministers may refer the case to the police for investigation and liaise with the Crown Prosecution Service in considering whether to pursue a prosecution through the courts. Successful prosecutions, however, are very rare.
69. For example, between 2006 and 2012 there were 119 recorded cases of damage to scheduled monuments. Four of these were reported to the police for investigation, but only one was successfully prosecuted resulting in a relatively small fine. Lack of evidence that the accused knew of the protected status of the monument was a common reason for not pursuing a prosecution.
70. During the consultation that informed the development of the Bill, the rarity of successful prosecutions for unauthorised works or damage to scheduled monuments was a cause of concern to many respondents. A number identified the defence of ignorance as an important contributory factor and called for action to require a higher standard of proof from defendants that they were genuinely unaware of a monument's status or location.

Purpose of the provisions

71. The purpose of the provisions is to limit the availability of the defence of ignorance under the 1979 Act.
72. A lack of knowledge of the status or location of a scheduled monument will only be permitted as a defence in unauthorised works cases if the accused can prove that all reasonable steps were taken to find out if there was a scheduled monument in the area affected by the works.
73. The reference to a person's state of knowledge will also be changed in the section dealing with intentional damage to or destruction of a protected monument; an offence will have occurred if the accused knew or reasonably ought to have known that a monument was protected.

⁹ Section 42 of the 1979 Act.

74. The existing defence for metal detecting on a protected monument will be retained, subject to minor changes to modernise the drafting.
75. These changes reflect the fact that the complete removal of the defence of ignorance would be too great a step and that there will be occasions where damage is caused without intent. For example, the precise extent of a monument on the ground may be difficult to determine. For this reason, damage or unauthorised works to monuments will not be strict liability offences.
76. The status and location of a monument is currently notified to owners and occupiers at the time of scheduling and the designation is made the subject of a land charge. Furthermore, the information and advice that is available to the public and land owners has increased significantly since the 1979 Act and the Welsh Government is committed to ensuring that the quality of this information is improved still further. The location and extent of all scheduled monuments will be made available on a publicly accessible, map-based, online database before the new provisions pass into law.

Intended effect of the provisions

77. The provisions aim to amend the defence of ignorance of the status or location of a protected monument so that, in cases of damage or unauthorised works, this defence can only be used if the accused had taken all reasonable steps to find out if a protected monument would be affected.

Introduction of enforcement and temporary stop notices for scheduled monuments (sections 12–14)

Background

78. It is an offence to carry out works to a scheduled monument unless they have been authorised through the prior grant of SMC by the Welsh Ministers or they qualify as permitted works granted SMC under the Ancient Monuments (Class Consent) Order 1994. It is also an offence to fail to comply with the conditions attached to a SMC.
79. However, the 1979 Act does not allow the Welsh Ministers to put an immediate halt to works to a scheduled monument that are unauthorised or contravene SMC conditions, leaving a court injunction as the only available mechanism. The 1979 Act also does not allow the Welsh Ministers to require the remediation of unauthorised works or the fulfilment of SMC conditions, short of prosecution.

Current position

80. In almost all of the 119 recorded instances of damage to scheduled monuments recorded in Wales between 2006 and 2012, the Welsh Ministers were able, through informal contacts, to put a stop to unauthorised works and secure the repair or reinstatement of the monuments. However, should a person who is

undertaking or has undertaken unauthorised works refuse to cooperate, the Welsh Ministers' only recourse is to seek an injunction from the courts or to refer the case to the police for investigation and possible prosecution.

81. It is also difficult to take firm action in circumstances where a person undertaking works has failed to comply with the conditions of an SMC. Most non-compliance issues are relatively minor and are resolved informally. Nevertheless, between 2006 and 2012, there were a minimum of 17 cases in which there were substantial failures to comply with SMC conditions.
82. In a number of these cases, applicants did not furnish required photographic records of work undertaken or prepare reports of archaeological excavations. These are not inconsequential infringements; the failure to fulfil a condition requiring analysis and publication of an archaeological report in a timely manner can lead to an ever-increasing risk that an irreplaceable archaeological record of Wales' past will be lost or compromised.
83. The use of listed building enforcement notices is well established and the lack of similar powers in respect of scheduled monuments has been a source of criticism.

Purpose of the provisions

84. These provisions give the Welsh Ministers new powers to take formal action in instances where scheduled monuments have been or are being damaged by unauthorised works or works that do not comply with the conditions attached to an SMC. It is anticipated that these new powers will only be used infrequently and proportionately, since, in all cases, an open and informal resolution to any problems will first be sought.
85. The provisions introduce two complementary notices — the temporary stop notice ('TSN') and the scheduled monument enforcement notice — that the Welsh Ministers will be able to use separately or in conjunction. Although it is anticipated that these notices will usually be applied to terrestrial scheduled monuments, the provisions are framed to allow their use in the marine environment should the need arise.

Temporary stop notice

86. The TSN allows the Welsh Ministers to require an immediate halt to any works that have recently been or are being carried out to a scheduled monument in contravention of the 1979 Act. The notice normally remains in effect for 28 days from its first display on the site. It is also served on the person carrying out the works and other people with an interest in the monument or land (including the owner and/or occupier).
87. While the notice is in force, the Welsh Ministers will seek an agreed resolution regarding the suspended works with the person or persons undertaking them. If a voluntary agreement cannot be reached within that time, the Welsh

Ministers can consider serving a scheduled monument enforcement notice or seeking an injunction as described below.

88. Contravention of a TSN is an offence, and, if found guilty, the accused is liable to a fine. Since deliberate damage to a monument may be prompted by the prospect of gain, the Bill directs that, when setting the fine, the court should have regard to any financial benefit the person may have received or will be likely to receive as a result of the offence.
89. Since a TSN only requires the suspension of works deemed to be unauthorised for a strictly limited period, no allowance is made for a formal appeal. The legislation recognises, however, that in some instances a person with an interest in a monument or land may be legitimately entitled to compensation for loss or damage, including that arising from breach of contract, suffered directly as the result of the service of a TSN.
90. The principal features of the TSN for scheduled monuments echo those for a comparable notice for listed buildings proposed elsewhere in the Historic Environment (Wales) Bill (see p. 28).

Scheduled monument enforcement notice

91. If the TSN furnishes a much-needed emergency response in cases of ongoing harm to a monument, the scheduled monument enforcement notice gives the Welsh Ministers a formal mechanism to set out their requirements to repair, or at least ameliorate, damage that has been done to a monument. It also gives the Welsh Ministers a means to enforce the fulfilment of undischarged SMC conditions.
92. Unlike the TSN, a scheduled monument enforcement notice does not take effect until a date specified in the notice, which must be at least 28 days after it is served. The written notice is served on any person who has an interest in the monument or land whom the Welsh Ministers deem to be materially affected by the notice.
93. An enforcement notice allows the Welsh Ministers to call for specified works to cease and for steps to be taken to:
 - restore the monument or land to its former state;
 - alleviate the effect of works carried out without SMC, if restoration is not practicable or desirable; or
 - bring the monument or land to the state it would have been in if the conditions of a granted SMC had been fulfilled.
94. The last not only allows the Welsh Ministers to demand the execution of any physical works that might be necessary to fulfil undischarged conditions, but also permits them to require the completion of any outstanding archaeological reports or other records.

95. Since an enforcement notice may place burdens upon an owner or other party with an interest in a monument or land concerned, the Bill makes explicit provision for an appeal against a notice to a magistrates' court. If an appeal is brought, an enforcement notice will not take effect until the appeal has been determined or withdrawn.
96. If the actions specified in an enforcement notice are not taken within the specified time, the monument might suffer further damage or archaeological information might be lost. The legislation therefore provides for a person duly authorised by the Welsh Ministers to enter the land to take the necessary steps and recover the costs from the owner or lessee.
97. Failure to comply with the terms of a scheduled monument enforcement notice is an offence, and, if found guilty, the responsible person is liable to a fine. In this instance, again, the Bill directs the court to consider any financial benefit the defendant gained or might expect to gain when setting the level of the fine.

Injunctions

98. The Bill's provisions also specifically permit the Welsh Ministers to apply to the High Court or the county court for an injunction if they consider it necessary or expedient to restrain actions on a scheduled monument that contravene the 1979 Act.

Intended effect of the provisions

99. The provisions will improve the protection of Wales' scheduled monuments, by giving the Welsh Ministers new instruments to act quickly to halt damage or unauthorised works and to require appropriate action to repair or ameliorate damage without recourse to the courts. The provisions will give the Welsh Ministers enforcement powers for scheduled monuments that are broadly comparable to those that are current or proposed for listed buildings in Wales.

Powers of entry for the archaeological investigation of an ancient monument in imminent danger of damage or destruction (section 19)

Background

100. The 1979 Act currently includes powers of entry that allow a person duly authorised by the Welsh Ministers to enter any land at any reasonable time to monitor and record the condition of a scheduled monument and undertake a variety of functions relating to the granting and operation of scheduled monument consent.
101. It also includes a specific power that permits a person duly authorised by the Welsh Ministers to undertake archaeological excavations with a view to recording matters of archaeological or historical interest on land known or

believed to contain an ancient monument.¹⁰ These excavations, however, may only be undertaken if agreement has been obtained from every person from whom consent would be required.

Current position

102. In the majority of instances, this requirement for consent before such recording excavations can proceed causes no particular difficulties, since there is no pressing danger to the archaeological deposits concerned. However, occasions do arise in which archaeological or historical evidence is threatened with imminent damage or destruction. In recent years, for example, erosion and storms have exposed fragile archaeological deposits along the coasts of Wales that are acutely vulnerable to further weathering. Similarly, unauthorised works to scheduled monuments may uncover and disturb archaeological evidence that needs to be assessed through excavation and recorded without delay. In such instances, the need to obtain the necessary consent or consents for the excavations may lead to the loss of unique and irreplaceable information on Wales' past.
103. The problems in obtaining the required consents promptly may be compounded by uncertainty about the identity and/or whereabouts of a monument's owner. The Welsh Government does hold records on the ownership of scheduled monuments and endeavours to keep them up to date. However, while a land charge is placed on a monument at the time of scheduling, there is no requirement for the Welsh Government to be informed of its sale or transfer. Information on the ownership of some monuments may, therefore, be unavailable or inaccurate. There may also be instances in which the legal ownership of a monument is unclear, or the owner lives overseas and is difficult to contact.

Purpose of the provisions

104. The provisions furnish the Welsh Ministers with the power to authorise archaeological excavations for the purpose of recording evidence from an ancient monument threatened by damage or destruction without the consent of the owner and any other person whose consent might be required. The removal of the requirement for consent in such archaeological emergencies will allow a person duly authorised by the Welsh Ministers to take immediate steps to limit the loss of archaeological information. It is anticipated that this new power will only be used in exceptional circumstances, for instance where an owner is unknown or efforts to contact the owner have been unsuccessful.

Intended effect of the provisions

105. The provisions will enable the Welsh Ministers to take prompt action to record information about the Welsh past that is at risk of being lost through the imminent damage or destruction of an ancient monument.

¹⁰ See footnote 6 above for a definition of 'ancient monument'.

Creation of a statutory register for historic parks and gardens (section 18)

Background

106. During the 1960s and the 1970s, there was a growing recognition of the need to improve protection for significant historic parks and gardens in the United Kingdom. In the decades that followed, registers or inventories of parks and gardens of special historic interest were established in England, Scotland and Wales. In Wales, a non-statutory register was published in a series of volumes between 1994 and 2007.¹¹

Current position

107. The non-statutory register currently includes 386 parks and gardens of special historic interest. Candidate sites are assessed against published criteria and a grading system of I, II* and II sites, analogous to that used for listed buildings.¹² Until now, sites have only been included on the register with the agreement of the owner. Consequently, a number of sites that meet the published criteria have not been placed on the register because the landowner has withheld permission. This has compromised the register's ability to present a comprehensive picture of known historic parks and gardens of special historic interest in Wales.

108. At present, there is no formal mechanism to review the inclusion of an entry or to amend the boundaries of an entry on the register. Due to the voluntary nature of the register, a landowner could seek the removal of a site from the register when purchasing a property or as a prelude to making a planning application.

109. The register was published as printed regional volumes, and these are generally available only in larger public or academic libraries. There is no single list of all the registered sites available on paper or online and access to information about the sites is poor.

110. Furthermore, since the sites on the register are not designated, they do not appear as a land charge on the Land Registry. A site will not, therefore, be found during a legal search undertaken prior to a sale. There is, therefore, no reliable mechanism for a prospective purchaser to identify whether a site is included in the register apart from a direct inquiry to Cadw or the relevant LPA.

111. The register was developed to inform the conservation of historic parks and gardens by owners, LPAs, developers, statutory bodies and all others concerned with them. Registered sites are given weight by *Planning Policy Wales*, which states that LPAs should take the register 'into account in

¹¹ Cadw and ICOMOS, *Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales — Part 1: Parks and Gardens*, 7 vols (1994-2007).

¹² The criteria and grading scheme appear in each published volume of the register and in Annex B of Welsh Office Circular 61/96, *Planning and the Historic Environment: Historic Buildings and Conservation Areas*.

preparing development plans' and that the effect of a proposed development on a site included in the register, or on its setting, 'may be a material consideration in the determination of a planning application.'¹³

112. *Planning Policy Wales* also states that LPAs should consult Cadw on planning applications affecting grade I and II* sites. Cadw seeks to be consulted on all applications affecting sites on the register, but this does not always happen.
113. The register also has a role outside of the planning system. It can support other forms of land management, for example, through agri-environment schemes and woodland management, and inclusion on the register can also be a significant factor in securing grant aid for conservation and restoration projects.

Purpose of the provisions

114. The provisions place a new statutory duty on the Welsh Ministers to compile and maintain a register of historic parks and gardens of special historic interest. The provisions also provide the Welsh Ministers with the power to modify the register by adding or removing sites or by amending existing entries. As soon as practicable after making a change to the register, the Welsh Ministers must inform the owner, the occupier and the relevant local authority or National Park authority.
115. The new statutory status of the register will not be accompanied by additional legal restrictions on historic parks and gardens or the introduction of a new consent regime. Rather, registered sites will continue to receive the current level of protection through the planning regime. However, the intention is to amend regulations to direct LPAs to consult with Cadw on all planning applications affecting grade I and II* sites and with a nominated amenity society on all planning applications affecting registered parks and gardens.
116. In support of the new provisions, up-to-date information on all registered parks and gardens (including their boundaries) will be included on a publicly available, map-based, online database. This will provide interested parties, including prospective purchasers, with accessible information on all sites included in the register.

Intended effect of the provisions

117. The provisions will require the Welsh Ministers to compile and maintain a comprehensive register of historic parks and gardens of special historic interest in Wales and to make this information publicly available. This will aid the informed conservation of the registered sites by owners, LPAs, statutory bodies and all others concerned with them.

¹³ *Planning Policy Wales* (July 2014), paragraphs 6.4.9 and 6.5.25.

Extension of the scope of urgent works to listed buildings and the recovery of costs through the introduction of local land charges (section 30)

Background

118. Maintaining historic buildings in use and in good condition contributes to the environmental, social and economic well-being of the people of Wales. The owners of listed buildings are not under any specific legal obligation to keep their properties in a good state of repair, but the majority of the country's approximately 30,000 listed buildings are well maintained.
119. Yet, nearly a quarter of the listed buildings in Wales are deemed to be at risk or vulnerable, often because they have lost their original functions and have fallen victim to neglect. As Welsh society changes in the twenty-first century, historic traditional farm buildings, industrial buildings and chapels and churches are at particular risk. Any empty or neglected building is a wasted asset that degrades the quality of its surroundings and can damage an area's economic and social vibrancy.
120. In many cases, LPAs can work with owners to provide encouragement and support for action to secure vulnerable buildings and find new, long-term uses for them. In others, LPAs may find that owners lack the means to undertake necessary works or are simply unwilling to take responsibility for neglected buildings.

Current position

121. Where support to an owner, which may include grants, fails to provide a solution to the problem of a deteriorating listed building, an LPA can call upon a range of statutory powers to address the issue. These include a specific power under the 1990 Act that enables an LPA to carry out any works that appear to be urgently necessary for the preservation of a listed building. If an LPA intends to undertake such works, they must be detailed in a notice to be served on the owner at least seven days before the works commence.
122. Current Welsh planning guidance restricts urgent works to emergency repairs — such as those that may be needed to prevent a building's collapse, make it weather tight or secure it against vandalism and theft. The current guidance directs that any steps taken should be the minimum necessary to deal with the pressing threats to the security of the building.¹⁴ The owner may choose to carry out the works specified in the notice, but, if not, the LPA may act.
123. As currently framed, the 1990 Act only permits urgent works on unoccupied buildings or on parts of occupied buildings that are not in use. This restriction places a significant limit on the applicability of urgent works and may make LPAs reluctant to consider their use. The use of a building for storage, for instance, may constitute occupation for the purposes of the Act, potentially obstructing

¹⁴ Welsh Office Circular 61/96, paragraph 132.

urgent works. Indeed, it has been suggested that, on occasion, owners have deliberately moved goods or materials into buildings to forestall them.

124. If a building is partly occupied, an LPA may be discouraged from pursuing urgent works by the difficulty of formulating an effective programme that only affects the parts not in use. Partly occupied buildings constitute 46 per cent of the buildings at risk in Wales,¹⁵ so this could be an important consideration in many cases where urgent works may be required.
125. Another factor that may deter LPAs from undertaking urgent works is the financial risk involved, which can be considerable when dealing with neglected historic buildings. The 1990 Act does make provision for the recovery of expenses for urgent works. The LPA may give notice to an owner requiring the payment of expenses, including any ongoing costs associated with the provision of temporary support or shelter for the building. Within 28 days of the service of that notice, the owner may dispute those expenses by asking for a determination from the Welsh Ministers. When giving notice of their determination, the Welsh Ministers must give their reasons and specify the amount recoverable by the LPA.
126. Yet the legislation provides the LPA with no specific mechanism for the recovery of those expenses, which must be pursued through the courts. If the ownership of the building is unclear, complex or vested in a company registered outside the UK, the proceedings to recover any debt can become lengthy, complicated and costly in themselves. This has been the experience of Welsh LPAs in several recent cases, and, in the current straitened financial climate, any uncertainty about the recovery of expenses will act as a powerful disincentive to undertaking urgent works.
127. The 1990 Act also empowers the Welsh Ministers to undertake urgent works to listed buildings. The Welsh Ministers will only exercise such powers in exceptional circumstances, when, for instance, an LPA is reluctant to undertake works or a building is in LPA ownership.¹⁶ The Welsh Ministers may also use their urgent works powers to preserve an unlisted building that is important for maintaining the character or appearance of a conservation area.

Purpose of the provisions

128. The provisions extend the scope of urgent works to occupied and unoccupied buildings alike and remove the restriction that urgent works can only be undertaken on areas of an occupied building not in use. This will allow LPAs to take action even if deteriorating buildings are being used for storage or other non-residential purposes and make it easier for them to develop plans for buildings in partial occupation.
129. If a building is in residential use, urgent works will still be permitted provided that they do not unreasonably interfere with that use. This is an important limitation

¹⁵ A total of 1,657 buildings are classified as at risk and 769 are categorised as partly occupied. These figures have been obtained from Cadw's Listed Building Condition Database (2011).

¹⁶ Welsh Office Circular 61/96, paragraph 131.

required to protect the human rights of any occupants, but in practice it will only rarely interfere with urgent works. There may be cases, however, where it would have a bearing on urgent works to buildings in partial occupation.

130. The provisions would make no changes to the nature of the works that can be undertaken, but would require the service of a notice of urgent works on both the owner and the occupier if a building is in residential use. They will also make important changes to the existing measures governing the recovery of costs for urgent works.
131. If the Welsh Ministers deliver a determination on the costs recoverable for urgent works, there is currently no mechanism for further appeal. To remedy this, the provisions will allow either the building's owner or the LPA to appeal to the county court within 28 days of the determination.
132. Since there have been instances in which months, if not years, have passed before LPAs have been able to recover costs arising from urgent works, the Bill also enables LPAs to charge interest from the time any notice requiring the payment of expenses becomes operative (following the determination of any appeals that may be lodged) until they recover any expenses and interest accrued.
133. The most important change that the Bill is making to facilitate the recovery of expenses from urgent works is establishing them as a charge upon the land. This legal charge is a local land charge, taking effect as soon as the payment notice becomes operative and remaining in effect until the debt and any accrued interest is paid.
134. To enable LPAs to enforce these charges, the Bill gives them powers of sale and lease, of accepting the surrender of leases and of appointing a receiver just as if they were a mortgagee of the property by deed.
135. These provisions apply equally to the Welsh Ministers, but it is expected that they will rarely, if ever, use their extended powers to undertake urgent works or recover costs.
136. The introduction of the local land charge and the accompanying enforcement powers should help to reduce the financial risk of urgent works for LPAs. It is hoped that this will encourage LPAs to make greater use of this important means to halt the continuing decay of many of the listed buildings in Wales that are most at risk.
137. In spite of the changes that the Bill will make, urgent works, by their very nature, can only ever be a part of the solution to the complex problem of a neglected listed building. If a building at risk is to be rescued, it must be brought back into active use with a function that will give it a viable future — something that legislation and guidance alone can never achieve.
138. The Welsh Government is committed to working across the historic environment sector to arrest the decay of historic buildings at risk. An all-

Wales condition review of listed buildings has been initiated that will provide information on the condition of listed buildings and identify vulnerable and at risk buildings. This will enable strategies to be developed that target those buildings most in need.

Intended effect of the provisions

139. These provisions aim to make urgent works a more useful tool for LPAs in their efforts to deal with the problem of neglected listed buildings. By reducing the restrictions on the applicability of urgent works, they should make it easier for LPAs to plan and implement emergency repairs on a wider range of listed buildings at risk. By instituting the costs for urgent works as a local land charge and establishing powers for enforcement, the provisions should help LPAs manage the financial risks associated with urgent works. These legislative changes should give LPAs greater confidence when taking decisions to halt the further decay of Wales' nationally important listed buildings through urgent works.

Introduction of temporary stop notices for listed buildings (section 29)

Background

140. The 1990 Act directs that listed building consent ('LBC') is needed for any works to demolish a listed building or to extend or alter a listed building in a way that would affect its character as a building of special architectural or historic interest. The LPA is primarily responsible for the administration of the LBC system in its area, which includes not only the receipt and determination of applications, but also any necessary enforcement actions.
141. It is an offence under the Act to carry out unauthorised works to a listed building, or to fail to comply with the conditions of an LBC. However, rather than resorting to prosecution, an LPA may find it expedient to issue a listed building enforcement notice. In the notice, the LPA must identify the works that are contravening or have contravened the 1990 Act and require steps to:
- restore the building to its former state;
 - alleviate the effect of unauthorised works if restoration is not possible or desirable; or
 - bring the building to the state in which it would have been had the conditions attached to an LBC been fulfilled.
142. An enforcement notice cannot take effect sooner than 28 days after it is served or until any appeal against it is determined.

Current position

143. Unauthorised works can quickly damage or destroy the special interest of a listed building. Between 2008 and 2013, Welsh LPAs recorded 501 cases of

unauthorised works to listed buildings — a figure that undoubtedly does not reflect the true number of cases due to inconsistencies in recording. In many instances, the intervention of an LPA officer — perhaps with a reminder that unauthorised works constitute an offence — will bring a prompt halt to unauthorised works.

144. However, should a person refuse to cease unauthorised works to a listed building, the 1990 Act currently provides an LPA with no specific powers to require an immediate stop. A listed building enforcement notice cannot take effect for at least 28 days, during which time a building could easily be irretrievably damaged or completely demolished. Prosecution is simply too slow a process to deal with such a situation, so, unless an LPA is able to use other powers under the planning control system, the only option is to apply to the courts for an injunction against the continuation of the works.

Purpose of the provisions

145. The provisions amend the 1990 Act to give LPAs the power to issue a TSN to prevent the continuation of unauthorised works that appear to them to affect adversely the special architectural or historical interest of a listed building. It is expected, however, that LPAs will routinely try to secure a voluntary suspension of any damaging works and that a TSN will only be used if a historic asset is in imminent danger and the person responsible is uncooperative or cannot be contacted.
146. The TSN for listed buildings closely mirrors the TSN for scheduled monuments proposed elsewhere in the Historic Environment (Wales) Bill (see p. 19) and those already widely used in general development control.
147. A listed building TSN will be issued in writing, specifying the works that must immediately cease and explaining that contravention of the notice constitutes an offence. The notice can be served on any person who appears to the authority to be carrying out the works or to have an interest in the building in question. A copy of the notice must also be displayed on the building, and takes effect from the date of its first display.
148. After 28 days, the notice ceases to have effect. If the local authority had not reached an agreed resolution to the situation during that time, it can choose to serve a listed building enforcement notice or seek an injunction from the courts.
149. If found guilty of contravening a TSN, a person will be subject to a fine. In acknowledgement of the fact that the prospect of gain might encourage a person to disregard a notice and proceed to demolish a building or damage it to such an extent that it no longer qualifies for listing, the Bill directs the court to take into account any financial benefits the individual received or might receive as a result of the offence when setting the fine.
150. The provisions do not allow for an appeal against a TSN, but, in certain specified circumstances, permit claims for compensation from any person who had an interest in a building on the day that a notice was first displayed

and suffered direct loss or damage, including penalties from breach of contract, resulting from the service of the notice.

Intended effect of the provisions

151. The provisions have been framed to enable LPAs to take prompt and effective action to protect listed buildings in Wales from unauthorised works that threaten their special architectural and historical interest.

Measures to enhance existing mechanisms for the sustainable management of the historic environment

Requirement for local planning authorities to create and maintain historic environment records (sections 33–36).

Background

152. Historic environment records ('HERs') store and provide access to systematically organised information about the historic environment and specific historic assets in a given area. They are critical sources of information for those making decisions about the sustainable management of the historic environment. The information they contain is an important starting point for management processes, conservation, fieldwork and research, and public engagement and outreach relating to the historic environment. They form the basis on which archaeological and other heritage management advice is provided to local planning authorities. Without this information, the essential advice that informs, for example, the assessment of the impact on the historic environment of development proposals will be brought into question.

Current position

153. There are currently four HERs in Wales, which had their origins in the Sites and Monuments Records established by the four Welsh archaeological trusts ('WATs') in the 1970s. Their creation was primarily prompted by a lack of archaeological information and the consequent loss of archaeological remains following development. Between them, the four HERs provide comprehensive coverage of the whole of Wales.
154. They are used to:
- support strategic and local policies for conserving the historic environment;
 - provide information about historic assets that might be affected by planning applications and other development proposals;
 - inform heritage-led regeneration;
 - contribute to educational and lifelong learning activities;
 - support research; and

- support and promote public participation and enjoyment of the historic environment.
155. The HERs complement the permanent archives held by local authorities and the RCAHMW by pulling together information about the historic environment and signposting in-depth resources elsewhere.
 156. At present, the four HERs in Wales are owned and managed by charitable HER trusts and they have no statutory status. The WATs, which are registered charities, maintain and provide public access to the HERs on behalf of the associated charitable trusts. The WATs provide development control advice on the impact of planning proposals on the historic environment to the LPAs in their regions. This advice is largely based on the information held in the HERs, which can take the form of paper documents, photographs or digital data. Members of the public may access the HERs in person, at the offices of the WATs, or through an online access system (*Archwilio*) and associated mobile phone App.
 157. The principal funding for the management and enhancement of the HERs and the provision of public access is provided as grant aid to the WATs from the Welsh Ministers, either directly or via the RCAHMW. Other contributions are received from the local authorities, commercially funded work, or the WATs' own charitable resources.
 158. Elsewhere in the United Kingdom, the majority of HERs are owned and managed directly by the relevant local authority. However, in the absence of a statutory role or status for the HERs, many are vulnerable to local authority cuts. In Wales, local authorities obtain their archaeological advice from the WATs or, in a small number of cases, from their own officers. However, formal recognition of the HERs as the source of this advice by local authorities is, at best, patchy and the status of existing service level agreements between LPAs and the WATs is variable. This has led to calls for local authorities to be obliged to take formal 'ownership' of an HER that meets a recognised standard for the purposes of informing archaeological and other heritage management advice.

Purpose of the provisions

159. The provisions require every LPA in Wales to create and keep up to date an HER and to make arrangements for information on the historic environment to be recorded, stored and made publicly available. The provisions detail the range of information to be contained in each HER. This includes information on designated and registered historic assets, historic assets that are considered to be of local interest and details of any relevant investigations that have been carried out in the authority's area.
160. Each LPA is obliged to make its HER a publicly available resource, free of charge and supported by professional advice and assistance to interpret the information that it contains. However, the authority may impose reasonable charges to recover the costs of certain services associated with the HERs.

161. The provisions permit an LPA to delegate the creation and maintenance of its HER to another 'person' or provider. The expectation is that authorities are likely to wish to continue the current arrangements whereby the WATs and the associated HER charitable trusts discharge those functions. Grant aid for this arrangement will continue to be provided by the Welsh Ministers, either directly or indirectly. The authorities will be free to make alternative arrangements should they wish to do so. However, the Welsh Ministers will have to be satisfied that any such arrangements are appropriate and meet the standard required of an HER.
162. The provisions also allow for the Welsh Ministers to issue guidance, following consultation, on the creation and maintenance of HERs, arrangements for the discharge of those functions, the publication of HERs and the setting of fees.

Intended effect of the provisions

163. The provisions seek to secure the future of HERs in Wales so that authoritative information on the historic environment is recorded and stored in an effective way and will be publicly available at a local level with appropriate professional interpretation and assistance for future reference, research and educational purposes. Henceforth, LPAs and other land managers will be able to base decisions that affect the historic environment of their area — strategic planning and development control decisions, for instance — on authoritative advice, information and evidence furnished by the HERs.

Introduction of heritage partnership agreements (sections 11 and 28)

Background

164. Authorised works to designated historic assets are regulated by consents obtained from the relevant authorities. LBCs are usually granted by LPAs, although in certain cases applications are directed to the Welsh Ministers. All SMCs are secured from the Welsh Ministers.
165. The two consent regimes are broadly similar in operation. The written consents specify the permitted works and may be subject to particular conditions. Undertaking work without the necessary consent or failure to comply with a consent or its conditions constitutes an offence, which may trigger the service of an enforcement notice (already in place for listed buildings and proposed elsewhere in the Bill for scheduled monuments) or prosecution.
166. Applications for consents usually require detailed proposals, including thorough descriptions of the planned works, supported by maps and plans or drawings.¹⁷ While such information is essential for the proper evaluation of an

¹⁷ Although a simplified process for certain scheduled monument consents is proposed elsewhere in the Bill (see pp. 36–7).

application by the consenting authority, applicants may have to expend considerable time, and sometimes money, on their preparation.

Current position

167. The owner of a single designated asset may only occasionally, or never, need to submit a consent application. However, private and institutional owners of large estates or multiple assets may find that they regularly have to apply for an array of separate consents for repairs or changes; these may include both LBCs and SMCs. If many of the assets are of a similar type and age — for instance, agricultural buildings or structures associated with canals and waterways — an owner may be faced with the prospect of repetitive applications for similar works, which nevertheless must be tailored to each individual asset to satisfy the application requirements.
168. The current system can be time-consuming and burdensome for both owners and the consenting authorities, whether LPAs or the Welsh Government. Even if a programme of works planned for several designated historic assets is supported by the applicant and authorities alike, all concerned will still be involved in a process made more complicated and resource intensive by the multiple consents required. In fact, piecemeal applications can sometimes obscure the wider objectives of a conservation programme and lead to disputes over specific details.
169. Management plans may help to reduce some of this burden. Plans for complex sites encompassing multiple listed buildings have sometimes been negotiated between LPAs and owners and managers. Since these have no statutory standing, they can only serve as informal memoranda of understanding and LBCs must still be applied for separately. The plans, however, may simplify the preparation and processing of any applications.
170. The 1979 Act currently makes statutory provision for management plans for ancient monuments and adjoining or nearby land that allow for a range of minor maintenance works without scheduled monument consent. However, separate applications would be required for any more substantial works. Moreover, such agreements may only be entered into with the occupier of the monument and associated land, though other interested persons may be a party to it.
171. While such plans undoubtedly assist in the positive management of the historic assets concerned, they would not, due to their respective characteristics and limitations, provide the basis for an integrated solution to the burden of consents faced by owners of large estates or multiple assets.

Purpose of the provisions

172. These provisions introduce heritage partnership agreements ('HPAs') to Wales. These entirely voluntary agreements will bring the relevant consenting authorities together with owners and other interested parties to put in place a plan for the medium- to long-term management of one or more designated historic assets. As statutory agreements, they will be able to incorporate both

LBCs and SMCs authorising works that have been identified and agreed by the parties. Such consents will be particularly useful for routine works required for the conservation and management of multiple assets that would otherwise have necessitated successive and largely repetitive applications. HPAs will be useful in situations such as:

- complex sites comprising many different historic assets, for instance a country house in its historic setting, a historic agricultural complex, or a university campus;
- dispersed sites of a single or similar asset type under single ownership, for example, bridges in local authority ownership; and
- sites already subject to management regimes where an HPA could work in alignment.

173. Research suggests that a number of benefits are likely to follow from the introduction of HPAs including:

- regular communication between owners, LPAs and other statutory bodies, which would contribute to a reduction in non-compliant works to heritage assets;
- time and resource savings when compared with individual consents;
- greater certainty and clarity amongst partners about works that had received consent;
- greater flexibility for owners in the management of their heritage assets, which would contribute to simplifying and improving the management of routine works; and
- improved consistency and performance in managing historic assets within a complex estate.¹⁸

174. The provisions modify both the 1979 Act and the 1990 Act in order to allow the establishment of HPAs for either scheduled monuments or for listed buildings. In some cases 'composite' HPAs covering both scheduled monuments and listed buildings might be established, although in reality they would comprise two legally distinct but parallel agreements.

175. In order to be effective, HPAs will need to be flexible so they can accommodate not only different types of sites and conservation requirements, but also different configurations of ownership, management and wider community involvement.

176. The required parties to an HPA will be the owner (or owners) of the assets and the relevant consenting authority. The Welsh Ministers will be a party to any HPA for scheduled monuments. In most HPAs for listed buildings, the LPA will be the consenting authority, although, in cases where an LPA is itself the owner, the Welsh Ministers would act as the consenting authority.

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78120/hrp_breport_eightpilotprojects.pdf

177. Additional parties to an HPA may be the Welsh Ministers (if not the consenting authority), an LPA (if not the consenting authority), the occupier or manager of a historic asset, any person with an interest in an asset or any person who has special knowledge of or interest in an asset or similar assets generally.
178. The broad participation in HPAs permitted by the Bill will ensure that these agreements are able to engage all those who can contribute to the positive management of the historic assets concerned. The Welsh Ministers, for instance, might wish to be a party to an HPA affecting a portion of a World Heritage site or an assemblage of sites in many parts of Wales. Equally, a community or amenity group that values a group of assets and wishes to have a more active role in their management might elect to join in an HPA.
179. Central to any HPA will be a negotiated management plan for the assets concerned that identifies works that will be required over the lifetime of the agreement. Once the parties concur on those works, the requisite consents with any attached conditions will be embodied in the HPA. Yet, HPAs will not just be packages of consents; the Bill makes provisions for HPAs to deal with a range of issues that affect the management of historic assets. These include:
- the identification of works that would or would not require further consents;
 - matters relating to maintenance and preservation;
 - arrangements relating to the provision of public access and associated facilities or the restriction of access or use; and
 - the provision of payments by the Welsh Ministers or an LPA towards costs for works under the agreement or arising from the agreement.
180. HPAs will not provide consents for all works that may be needed upon the designated assets. Not all works can be anticipated or agreed in advance. Major interventions that will have a significant impact on assets will still require individual consents, since the plans would need full and detailed consideration. Additionally, any planning permission that might be necessary alongside the consents included in the HPA will need to be applied for separately.
181. It is intended that breach of an HPA by an owner will automatically terminate the agreement and any consents it may have provided. Individual consents would thereafter be needed for all works to designated assets, even if they had been agreed and granted consent under the HPA. If a breach occurs, the owner could be served with an enforcement notice or, if it involves an offence under the 1979 or the 1990 Act, be prosecuted.
182. If conditions contained with an HPA, either attached to a consent or to the agreement generally, are not fulfilled, it is expected that in the first instance it will be a matter for negotiation between the consenting authority and the parties to the HPA. If the situation cannot be resolved, the HPA can, as a last resort, be terminated and an enforcement notice served.
183. The establishment of an HPA will inevitably require a substantial investment of time and expense for all parties involved. Detailed assessments of the

assets to be covered by the agreement and the nature of the planned works will need to be completed and a management plan formulated before an HPA can be settled. In order to recover these initial costs through savings made on the individual consents that would have been needed, an HPA will have to have a long life. In light of such considerations, the term of an HPA will need to be decided by the parties and stated in the agreement.

184. As well as offering savings over the medium to long term, an HPA will also bring a more positive partnership approach to the sustainable management of the designated historic assets. This will result in greater certainty over the aspirations and requirements of all involved. It will also provide more consistent and coherent conservation and management of the assets based on:
- a better understanding of the significance of assets and the risks posed to them;
 - a better understanding of potentially conflicting interests in the management of the assets and the identification of positive solutions; and
 - a proactive rather than reactive approach to the management of sites through planned programmes of works.

Intended effect of the provisions

185. The HPA provisions have been framed to improve the sustainable management of Wales' designated historic assets through the creation of management plans agreed by consenting authorities, owners and other interested parties working in voluntary partnership. The agreements will support integrated and coherent programmes of work over periods of years. This will not only benefit the assets, but also bring savings to the parties involved.

Modifications to the scheduled monument consent process (sections 5–10)

Background

186. The 1979 Act makes it an offence to carry out specified works to a scheduled monument unless they are authorised either by an SMC granted by the Welsh Ministers, or as permitted works under certain class consents.

Current position

187. At present, SMC applications are submitted to the Welsh Ministers on a form prescribed by regulations. Although there is no requirement for consultation on SMC applications, in practice relevant external bodies are consulted on those few occasions when applications are controversial or complex.
188. Once an application has been considered, the Welsh Ministers send an interim decision letter to the applicant, which will include any conditions they are proposing to attach to the SMC. The applicant may accept the proposed

decision or make further representations before the application is determined and the final written SMC decision letter is issued. The applicant also has a right to a public local inquiry or a hearing before a person appointed by the Welsh Ministers before the final determination.

189. The SMC process has, in general, worked well. However, several areas have been identified where aspects of the process could be updated, simplified or otherwise improved.
190. The current, formal, written approach does not take account of new ways of delivering public services that have become available since 1979, in particular the ability to submit and grant consent electronically.
191. Most types of work to a scheduled monument require SMC and a significant number of applications involve proposals for simple or unobtrusive minor works and repairs. Yet, there is currently no discretion in the way that the SMC process is applied, which can be a disincentive to owners in carrying out works which would benefit a monument.
192. There is no legal mechanism to allow the Welsh Ministers to grant consent for unauthorised works already undertaken. In some circumstances, it could be in the best interests of the monument for unauthorised works to be retained, particularly where reversal would lead to additional damage to a monument or where uncontentious works would leave the monument vulnerable if not completed. It could also be considered appropriate in some cases to remove the threat of future prosecution or other sanction. For example, a farmer might carry out unauthorised, but beneficial, repairs and then risk financial penalties under an agri-environmental scheme.
193. Because there is no fee attached to an SMC application, the process is potentially open to costly abuse, with repeated applications being made for the same or similar works, even if previously refused. Similarly, the current system allows requests for hearings whatever the proposed decision by the Welsh Ministers.
194. The right to such hearings, following the issue of interim decisions, are increasingly out of step with other parallel consent processes and there are proposals to remove this right in respect of both planning and LBC applications. In practice, requests for hearings are extremely rare. Instead, a more efficient, timely and cost-effective approach would be the consideration of written representations by an appointed person.

Purpose of the provisions

195. The provisions amend the 1979 Act to modernise and simplify the existing SMC process and introduce certain enhancements.
196. They relax the rules governing the SMC process to allow applications for, and grants of SMC to be made by means other than in writing.

197. The Welsh Ministers will be able to introduce a simplified application procedure under which the Welsh Ministers, with the agreement of the owner, can simply authorise a defined set of minor works without the need for an application form or interim decision letter.
198. The provisions make allowance for SMC to be granted for unauthorised works already executed and for the retention of unauthorised works.
199. The Welsh Ministers may refuse to entertain an application for SMC where a similar application has been refused in the previous two years and there has been no significant change in any material considerations.
200. Applicants for SMC will no longer have an automatic right to a hearing before the determination of their application. While an applicant can still request a hearing, it will be for the Welsh Ministers to decide the most appropriate method of review.

Intended effect of the provisions

201. The provisions aim to streamline and update the SMC process and align it more closely with LBC procedures and the planning system.

Relaxation of the conditions for an application for a certificate of immunity from listing (section 27)

Background

202. Historic buildings make up a substantial proportion of the building stock in Wales — some 35 per cent of our buildings were built before 1919. A small proportion of Welsh historic buildings are protected by listing, around two per cent, and many of the remainder are in regular use. However, in virtually every community in Wales, historic buildings stand empty and gradually decaying, waiting for a new use that will bring them back to life.
203. An owner or developer contemplating the rescue of such a building could be concerned that any project for its reuse would call attention to its architectural or historical character and lead to its listing. Although listing is not a block on the reuse of existing buildings, many developers regard it as a costly burden that acts as a disincentive to development. The prospect that a historic building might be listed could deter an owner or developer even considering plans that might give it a sustainable future.

Current position

204. Under the terms of the 1990 Act, any person can apply to the Welsh Ministers for a certificate stating that the Welsh Ministers have no intention to list a particular building. The receipt of an application for such a 'certificate of immunity from listing' ('COI') will trigger the full consideration of the building for designation. If it meets the criteria, the Welsh Ministers will list the building

and the applicant will be able to decide whether to proceed with the project in the knowledge that LBC will be necessary for the works.

205. If the building does not meet the designation criteria, the Welsh Ministers will issue a COI, stating that they have no intention to list the building for a period of five years. The issue of a COI will also preclude an LPA from serving a building preservation notice for the same period.¹⁹ A COI, therefore, will give an owner or developer the confidence to carry a development forward without troubling concerns that listing or the service of a building preservation notice might disrupt a development.
206. At present, an application for a COI can only be made once a planning application has been submitted or planning permission has been obtained. Evidence from LPAs and developers indicates, however, that much of a project's feasibility is often determined before any planning application is lodged. A developer might invest considerable time and resources in plans for a historic building before an application for a COI could be made, and listing at a late stage in a project's development could lead to costly delays or even its complete abandonment.

Purpose of the provisions

207. The provisions relax the conditions for an application for a COI, so it can be made at any time, irrespective of any application for or grant of planning permission. The features of the existing system for the administration of COIs otherwise remain unchanged.
208. An owner or developer will, therefore, be able to apply for a COI well in advance of any substantial investment of time or money on a feasibility study or a planning application. There is no charge for a COI application, but an applicant will be required to provide information on the location and historic character of the building.

Intended effect of the provisions

209. By allowing an application for a COI to be made at any time, the provisions will allow owners or developers contemplating the reuse of a historic building to proceed with greater confidence. If a COI can be obtained to clarify the status of a building at the very outset of a project, the Welsh Government expects that developers will be more likely to invest the time and resource to formulate plans for undesignated historic buildings, secure planning permission and complete their projects.

¹⁹ An LPA can use a building preservation notice to protect an unlisted building under the provisions of the 1990 Act for a period of six months, if the building is of special architectural or historical interest and it is in imminent danger of demolition or alteration that would affect that interest. During that time, the building will be considered for designation.

Section 4: Consultation

210. The development of the Historic Environment (Wales) Bill has been informed by extensive engagement with stakeholders across the historic environment sector in Wales and members of the public, two public consultations and specially commissioned research. This activity is summarised below.

Engagement

211. During 2012, Cadw organised a series of events with heritage professionals, the third sector and members of the public to gather their views on the existing systems for the conservation and management of the historic environment and get ideas about how those systems might be improved.

- Three horizon-scanning workshops were held in Cardiff, Aberystwyth and Llandudno Junction in February and March 2012. With over 90 participants, these workshops sought to identify the challenges that the Welsh historic environment is likely to face in the future and consider how they might be met. A report on these workshops has been published online at:
<http://cadw.wales.gov.uk/historicenvironment/policy/towardsaheritagebillforwales/?lang=en>
- Four specialist workshops were organised in May and June 2012 to explore specific issues in the historic environment. Nearly 130 people attended sessions on:
 - the built historic environment (at Aberystwyth);
 - historic landscapes, parks and gardens (at Stackpole, Pembrokeshire);
 - archaeology (at Llandudno Junction); and
 - historic assets from the owner's perspective (at Fonmon Castle, Vale of Glamorgan).
- The fourth Treftadaeth conference, 'The Future of our Past', held in Cardiff in July 2012 was attended by nearly 150 people and was the venue for active stakeholder discussion on the issues that the Bill should address.
- Three open, public 'Have your Say' events were organised with assistance from CyMAL: Museums, Archives and Libraries Wales and the Wales Council for Voluntary Action during October and November 2012. Held in Carmarthen, Brecon and Conwy, these occasions gave third sector organisations and local communities opportunities to feed their views into the development of the Bill. Over 120 people took part.

212. The information gathered at these events informed the Welsh Government's *Historic Environment Strategy for Wales* and its associated 'Headline Action Plan' and shaped the proposals developed for the Historic Environment (Wales) Bill.

Consultation

The future of our past

213. A formal twelve-week consultation, *The future of our past*, was launched on 18 July 2013 to obtain responses from the historic environment sector and the wider public to the proposals for the Welsh historic environment being considered for the Bill and associated measures.
214. The consultation received 177 responses, many of which contained detailed and insightful views that reflected the importance of the historic environment to the people of Wales.
215. In most cases, the consultation elicited clear support for the Bill's proposals to extend protection where needed, to increase flexibility in the existing systems for management and to improve accountability and transparency. The responses also revealed that, for many, the improved guidance that is being proposed to support the sustainable management of the historic environment will be as important as the proposed changes to legislation.
216. A summary report on the consultation and the consultation responses are available online at: <http://wales.gov.uk/consultations/cultureandsport/heritage-bill/?status=closed&lang=en>
217. Several consultation events were also organised. The Historic Environment (Wales) Bill team worked with Cadw's Lifelong Learning team to develop and deliver consultation events for sixth-form Welsh Baccalaureate students in Swansea and Conwy/Llandudno Junction. The students took part in an activity based on a real-life application for consent to demolish a listed building, which encouraged them to consider the importance of the historic environment and to engage with some of the central issues relating to its sustainable management. A total of 187 students from eight schools took part in the events, which were well received by the young people and their teachers. A report on these sessions is included in the summary report on the consultation (link above).
218. Two workshops were also held. The first, attended by 21 key stakeholders, looked in detail at the future of the third sector in Wales in light of proposals in the consultation. Analysis of the outcome of the workshop and the consultation responses to the questions on those proposals has been included in Hyder Consulting's report, 'An Options Appraisal for the Future of Third Sector Support for the Historic Environment in Wales' (see paragraphs 222–223).
219. The second workshop was attended by over 40 people. It provided an opportunity for key stakeholders to develop their knowledge and understanding of the options under consideration for the future of RCAHMW and Cadw to enable them to respond comprehensively to the consultation.

Proposed amendments to the criminal offences and defences in sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979

220. A number of respondents to the consultation, *The future of our past*, expressed concern about the rarity of prosecutions for damage to scheduled monuments. In light of this and other supporting evidence, the Welsh Government conducted a supplementary six-week consultation, *Proposed amendments to the criminal offences and defences in sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979*, to solicit views on proposals that would limit the availability of a defence based on ignorance of a scheduled monument's status or location.
221. A total of 60 responses were received and there was general support for the proposals. A summary report on the consultation and the consultation responses can be consulted online at:
<http://wales.gov.uk/consultations/cultureandsport/proposed-amendments-to-the-criminal-offences-and-defences/?status=closed&lang=en>

Research

222. In order to obtain more detailed evidence to support the formulation of policy for the Bill and the suite of measures that will complement it, the following four research studies were commissioned.
- Ove Arup & Partners Ltd, 'Heritage Bill for Wales: A research project to investigate three of the emerging topics' (heritage partnership agreements, historic areas and local lists)
 - Hyder Consulting (UK) Ltd, 'Heritage Bill for Wales: Options for the Delivery of Local Authority Historic Environment Conservation Services'
 - Hyder Consulting (UK) Ltd, 'Refining the Listed Building Consent Process'
 - Hyder Consulting (UK) Ltd, 'An Options Appraisal for the Future of Third Sector Support for the Historic Environment of Wales'
223. All are available online at:
<http://cadw.wales.gov.uk/historicenvironment/policy/towardsaheritagebillforwales/?lang=en>

Section 5: Power to make subordinate legislation

224. The Bill contains provisions to make subordinate legislation and directions and issue guidance. Table 5.1 (subordinate legislation) and Table 5.2 (directions and guidance) set out in relation to these provisions:
- the person upon whom, or the body upon which, the power is conferred;
 - the form in which the power is to be exercised;
 - the appropriateness of the delegated power; and
 - the procedure to be applied — that is ‘affirmative’, ‘negative’ or ‘no procedure’, together with reasons why it is considered appropriate.
225. To assist in understanding the Welsh Ministers’ intended use of these powers, a separate ‘Statement of Policy Intent’ is being published alongside the Bill.
226. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of the consultation will be decided upon when the proposals have been formalised.

Table 5.1 — Summary of powers to make subordinate legislation in the provisions of the Historic Environment (Wales) Bill

Part 2: Amendments to the Ancient Monuments and Archaeological Areas Act 1979					
Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 3(1) inserting section 1AA(6) — Duty to consult on certain amendments relating to the Schedule.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make regulations to add to the categories of people identified in the Bill who should be served with a notice of the proposed inclusion or exclusion of a monument, or of a proposed amendment to the Schedule.	Affirmative	The regulation-making power allows the Welsh Ministers to make consequential amendments to the 1979 Act to extend the categories of people who should be formally notified.
Section 3(1) inserting section 1AD(2) — Compensation for loss or damage caused by interim protection.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set out the time and manner in which any compensation claim needs to be made to the Welsh Ministers.	Negative	Prescribes matters of detail which may change from time to time.
Section 3(1) inserting section 1AE(6) — Review of decisions on certain amendments relating to the Schedule.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make regulations setting out the grounds on which an application for a review may be made and other procedural matters associated with the review. These are technical matters that require flexibility.	Negative	Prescribes technical matters of detail which may change from time to time.
Section 5(1) inserting new section 2(5B) — Simplification of SMC process.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set out the form and content of SMC. This is a technical matter that may need updating.	Negative	Prescribes technical matters of detail which may change from time to time.

Section 5(2) inserting paragraph 1(3) into Part 1 of Schedule 1 — Simplification of SMC process.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make regulations setting out the circumstances when an application form for SMC is not required. This may need updating from time to time.	Negative	Prescribes technical matters of detail which may change from time to time.
Section 10 inserting new section 7(4A) into the 1979 Act — compensation for refusal of scheduled monument consent.	The Welsh Ministers	Regulations	Suitable for delegated powers as it enables the Welsh Ministers to make regulations setting out the types of works that would still result in compensation where SMC has been refused, even where those works would have resulted in damage to the monument. .	Negative	Prescribes matters of detail which may change from time to time.
Section 11 inserting section 9ZB(3) — HPAs relating to scheduled monuments.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make provision with respect to HPAs for consultation, publicity and the application, disapplication or reproduction of provisions of the 1979 Act. It also allows regulations to be made enabling the Welsh Ministers to terminate by order an HPA or any provision of such an agreement.	Affirmative	The regulation-making power allows the Welsh Ministers to disapply or apply, with or without modifications, any provisions in the 1979 Act for the purposes of HPAs.
Section 13 inserting section 9ZL(1) — TSNs: compensation	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set out the time and manner in which any compensation claim needs to be made to the Welsh Ministers.	Negative	Prescribes matters of detail which may change from time to time.

Part 3: Amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990					
Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 24 inserting 2A(5) — Duty to consult on certain changes to lists.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make regulations to add to the categories of people identified in the Bill who should be served with a notice of the proposed inclusion or exclusion of a building from the list.	Affirmative	The regulation-making power allows the Welsh Ministers to make consequential amendment to the 1990 Act to extend the categories of people who should be formally notified.
Section 24 inserting 2D(6) — Review of certain listing decisions.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make regulations setting out the grounds on which an application for a review may be made and other procedural matters associated with the review. These are technical matters that may need updating occasionally.	Negative	Prescribes technical matters of detail which may change from time to time.
Section 24(3) inserting 28B(2) — Compensation for loss or damage caused by interim protection.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set out the time and manner in which any compensation claim needs to be made to the Welsh Ministers.	Negative	Prescribes matters of detail which may change from time to time.
Section 28 inserting section 26M(3) — HPAs relating to listed buildings.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to make provision with respect to HPAs for consultation, publicity and the application, disapplication or reproduction of provisions of the 1990 Act. It also allows regulations to be made enabling	Affirmative	The regulation-making power allows the Welsh Ministers to disapply or apply, with or without modification, certain provisions within the 1990 Act for the purpose of heritage partnership agreements.

			the Welsh Ministers and local planning authorities to terminate by order an HPA or any provision of such an agreement.		
Section 29 inserting 44B(11) — TSNs.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to prescribe circumstances when a TSN should apply. The main circumstances are included on the face of the Bill, but the regulation provides some flexibility to adapt their use in light of experience of their use.	Negative	Prescribes matters of detail that may change from time to time.
Section 29(1) inserting 44D(1) — TSNs: compensation	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to set out the time and manner in which any compensation claim needs to be made to the Welsh Ministers.	Negative	Prescribes matters of detail which may change from time to time.

Part 4 : Miscellaneous					
Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 33(9) — HERs.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to vary the meaning of historic environment records in light of experience of their use. Prior to making the regulations the Welsh Ministers are required to consult with local planning authorities and any other person whom they consider appropriate (section 33(10)).	Affirmative	The regulation-making power allows Welsh Ministers to amend the meaning given in the Bill as to what records the historic environment should contain.

Section 38(7)(h) — Advisory panel: constitution, etc.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Ministers to specify who would be disqualified from membership of the panel in the future. The main disqualifications from membership are already included in section 36(7).	Negative	The main disqualifications from membership are already included in the Bill and therefore any subordinate legislation will be concerned with relatively minor detail.
Section 40(3) — coming into force.	The Welsh Ministers	Order	Suitable for delegated powers as this enables the Welsh Ministers to commence certain provisions of the Bill that are not commenced automatically. Transitional, transitory or saving provisions can be made in connection with the coming into force of the provisions.	No procedure	These orders relate to commencement and are technical in nature.

Schedules					
Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 1 of the Bill inserting Schedule A2 into the 1979 Act — Paragraph 1(1): Classes of reviews for decision by appointed persons.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Minister to prescribe the classes of reviews in which a decision is to be made by an appointed person instead of the Welsh Ministers. This may need updating occasionally.	Negative	Prescribes technical matters of detail which may change from time to time
Schedule 2 inserting Schedule 1B into the 1990 Act — Paragraph 1(1): Classes of reviews for decision by appointed persons.	The Welsh Ministers	Regulations	Suitable for delegated powers as this enables the Welsh Minister to prescribe the classes of reviews in which a decision is to be made by an appointed person instead of the Welsh Ministers. This may need updating occasionally.	Negative	Prescribes technical matters of detail which may change from time to time.

5.2 Summary of powers to make directions and to issue guidance in the provisions of the Historic Environment (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 36 — HERs.	The Welsh Ministers	Guidance	Allows the Welsh Ministers to issue guidance to LPAs on their duties in relation to HERs.	No procedure	The power to issue guidance is intended to facilitate the application of the primary legislation. The guidance will be largely concerned with process and, as such, Assembly procedure is not appropriate.
Schedule 1 inserting Schedule A2 into the 1979 Act — Paragraph 5: Administrative tasks associated with reviews.	The Welsh Ministers	Directions	Allows the Welsh Ministers to issue a direction that anything that should have been done by an appointed person in relation to a review of the Welsh Ministers' decision to schedule a monument, with the exception of making the decision, may be done instead by the Welsh Ministers.	No procedure	This enables the Welsh Ministers to direct that some administrative tasks may be undertaken by them rather than the appointed person.
Schedule 2 inserting Schedule 1B into the 1990 Act — Paragraph 5: Administrative tasks associated with reviews.	The Welsh Ministers	Directions	Allows the Welsh Ministers to issue a direction that anything that should have been done by an appointed person in relation to a review of the Welsh Ministers' decision to list a building, with the exception of making the decision, may be done instead by the Welsh Ministers.	No procedure	This enables the Welsh Ministers to direct that some administrative tasks may be undertaken by them rather than the appointed person.

Part 2 — Regulatory impact assessment

Section 6: Regulatory impact assessment

227. The historic environment makes a substantial contribution to the economy of Wales. A 2010 study found that it supported 19,000 full-time-equivalent jobs directly and over 30,000 indirectly with the sector contributing some £1.8 billion in output and approximately £840 million to Wales' national Gross Value Added (GVA).²⁰ The same study found that tourism represented a significant proportion of this economic value, with the historic environment forming one of the top reasons to visit Wales.
228. However, the historic environment is not just valued for its economic importance. A number of UK and international studies conducted over the last 20 years have assessed the value that society places on individual historic buildings and sites, including townscapes and archaeological sites. These studies are best summarised by a report by Eftec for English Heritage.²¹ As is the case with the natural environment, society derives both 'use' and 'non-use' value from the historic environment. People derive value not only from using (i.e., visiting) historic sites, but also from the knowledge that sites exist (existence value), are available for others (altruistic value) or will be available for future generations (bequest value). There is general agreement across society that actions to protect and preserve the historic environment — and the values derived from it — are necessary and worthwhile. Nevertheless, while these values to society are significant, they cannot be meaningfully monetised.
229. The importance of these non-quantifiable values must be borne in mind in the evaluation of the costs and benefits of the provisions in the Historic Environment (Wales) Bill that follows. Although the benefits of protecting, conserving and enhancing the historic environment may be apparent, it is often difficult to attach a simple monetary value to the improvements to the effective and transparent management of the historic environment that the Bill will make.
230. This regulatory impact assessment ('RIA') has been completed in accordance with Standing Order 26.6(vi) of the National Assembly for Wales. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.
231. The assessment is structured around the individual elements of the Bill. It presents a range of possible options for each element, followed by costs, benefits and the preferred option. Although the subordinate legislation arising from the Bill will have its own RIA in due course, the cost of the effects of the subordinate legislation have been identified in the analysis that follows.

²⁰ ECOTEC Research and Consulting Ltd, *Valuing the Welsh Historic Environment* (2010).

²¹ Eftec, *Valuation of the Historic Environment* (July 2005).

232. The analysis has been based upon the best information available at the time of writing, with much of it obtained from discussions with stakeholders. Although costs and savings are indicated, some provisions are subject to variables which mean that only a potential range of costs can be outlined.

Section 7: Options, costs and benefits

Consultation, interim protection and review for statutory designations (sections 3–4 and 24–26)

Options

233. Two options were considered:

- Option 1 — Do nothing and continue with existing informal consultation procedures prior to designation and informal appeals to Cadw against designation.
- Option 2 — Formally consult owners prior to designation of a historic asset and create a structure for the review of designation decisions.

Option 1 — Do nothing and continue with existing informal consultation procedures prior to designation and informal appeals to Cadw against designation.

234. There is no statutory obligation on the Welsh Ministers to consult an owner before the designation of their property as either a listed building or a scheduled monument, which carries with it legal constraints on how that property can be used or changed. In practice, Cadw consults owners informally and will take any representations into account in reaching a designation decision. This informal procedure does not fully satisfy the Welsh Government's objective of acting transparently and inclusively.

235. There is also no current review process for an owner who disagrees with a decision to designate other than to challenge the decision through judicial review. This can act as a barrier to many owners. Cadw believes that only one designation decision in Wales has ever been taken to judicial review, and that concerned a major commercial development.

Option 2 — Formally consult owners prior to designation of a historic asset and create a structure for the review of designation decisions.

236. This option would place a duty on the Welsh Ministers to consult the owner and occupier, together with the LPA and any other interested parties, when they are minded to list a building or schedule a site.

237. During the consultation period, the site or building will be subject to interim protection. Whilst under interim protection, listing or scheduling legislation will apply, as appropriate, including the need to apply for consents as well as any liability for offences relating to damage or unauthorised works.

238. If, following consultation, the Welsh Ministers decide to designate a property, the owner and occupier will have a right, within a prescribed time period, to request a formal review of the decision. Where such a request is made, the

Welsh Ministers will appoint an independent person to carry out the review and decide whether the statutory designation should stand.

Costs

Option 1 — Do nothing and continue with existing informal consultation procedures prior to designation and informal appeals to Cadw against designation.

239. Continuation of the existing arrangements will not result in any additional costs.

Option 2 — Formally consult owners prior to designation of a historic asset and create a structure for the review of designation decisions.

240. It is already Cadw's practice to consult owners, occupiers and interested parties prior to designation, so statutory consultation will not result in any increase in costs in the vast majority of cases. Only in situations where a site or building is under threat, when immediate spot-scheduling or spot-listing would have taken place, will a negligible increase occur. The new arrangements for consultation and interim protection will require an additional notification letter in such cases, creating a slight increase in administrative costs. However, such action is only rarely required — less often than once a year — and would equate to an additional annual staff cost of less than £50.

241. Interim protection will similarly not result in any increase in costs given that it will only be put in place where the Welsh Ministers, following inspection and research, are minded to designate and notice of the start of interim protection will be given in the consultation letter. The administrative costs, therefore, will be the same as those for the current practice of informal consultation.

242. Both the Welsh Government and the LPA will need to amend constraints mapping and records to show the interim protection and subsequently update them to reflect the final designation decision. As such an additional step in the process will be introduced.

The Welsh Government

243. In the Welsh Government, the mapping is assessed at taking less than 0.5 hours per case and, therefore, the additional stage in amending the mapping will cost less than £10 per case.²² Following the completion of the listing survey of Wales in 2005, the annual number of designations is currently relatively low (see Table 1). Basing the calculation on 67 cases per year (the average of the period from 2008 to 2013), the additional costs would amount to less than £1,000 per annum.

²² Staff costs based on updated Annual Gross Costs 'Pay Band Costs and Standardisation of DRC Forecasting', Welsh Government (June 2014).

Table 1 — Annual numbers of designation actions, 2008–2013.²³

	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Listings	21	11	32	19	9
Schedulings	131	49	58	6	1
Total	152	60	90	25	10

244. The likely number of reviews annually is difficult to anticipate. Until now, judicial review furnished the only means to challenge a designation, and, to the best of Cadw’s knowledge, it has only ever been used once. The new review mechanism, which is relatively straightforward and will entail limited cost for the owner, can be expected to lead to a greater number of formal challenges.
245. The key factor in determining the number of likely review requests is the number of designations proposed by Cadw which, as shown in Table 1, is highly variable and dependent upon the resources and priority allocated to this area of work. Cadw’s view is that most issues relating to the strength of the evidence in support of a designation are resolved during the consultation phase and that consequently challenges on the grounds that the criteria for scheduling or listing have not been met are rare. It also advises that it relatively unusual for schedulings to be challenged, since the impacts on the owner are typically very limited or even beneficial.
246. Cadw estimates that, at the most, reviews will be requested in around 5 per cent of the designation decisions made every year, although the numbers could prove to be much lower. Using 67 as the average number of designations over the 5 years shown in Table 1, there would then be some 3 reviews annually. If, as anticipated, the reviews are managed by the Planning Inspectorate, there will be an annual cost of £6,750 (based on the assumption that a Planning Inspector receiving written representations would need 3 days for each case at a daily cost of £750).
247. There are limited avenues to challenge the decision of the appointed person on the review, but the potential for judicial review remains. In light of the extreme rarity of the judicial review of designation decisions in Wales, it is anticipated that no such challenges will be made over the next five years and, therefore, any cost can be discounted.
248. Interim protection could potentially give rise to costs resulting from compensation claims where the owner/occupier has suffered financial loss as a result of interim protection and the Welsh Ministers decide not to proceed with designation. However, interim protection will only be conferred when the Welsh Ministers are minded to designate, thereby reducing the risk of compensation claims. Initial contact with owners/occupiers at the inspection stage, prior to formal consultation, will also highlight additional information and any issues that may give rise to compensation claims, such as extant planning permissions.

²³ Source, Cadw.

249. Though the potential for compensation claims exists, Cadw believes that it will be possible to avoid any claims through prior informal discussion and negotiation. Indeed, Cadw has no record of any successful claims arising from scheduling or listing under the existing provisions of the 1979 and 1990 Acts. The best estimate of this cost is, therefore, zero.

Owners

250. There would be a new cost to an owner of the designated land or building in seeking a review. The review itself would be free, but the owner would need to make a submission setting out the grounds and evidence for disputing the designation decision. This could range from simply compiling photographic evidence showing the extent to which the property had been restored, to commissioning consultants to provide expert opinion. The cost to the owner is estimated to be between £50 to £2,000. This is, however, likely to be less costly than judicial review — currently the only available means of challenge.

Local planning authorities

251. The LPAs will also need to update their constraints mapping to show sites subject to interim protection. This will increase costs by introducing an additional stage into existing processes of mapping sites designated as listed buildings or scheduled monuments. Based on a cost per case of £10 and an annual average of 67 designations, this would mean an annual additional staff cost of £670 across the Welsh LPAs.

Benefits

Option 1 — Do nothing and continue with existing informal consultation procedures prior to designation and informal appeals to Cadw against designation.

252. This option continues the existing arrangements and so does not bring any new benefits. The system is, however, long established and informal consultation and review by Cadw is generally accepted. The arrangements also have the benefit for the Welsh Ministers of being straightforward, with limited rights of owners to challenge designation decisions. However, following the completion of the listing resurvey of Wales in 2005, large numbers of designations are not anticipated, so this procedural benefit is reduced.

Option 2 — Formally consult owners prior to designation of a historic asset and create a structure for the review of designation decisions.

253. Placing a duty on the Welsh Ministers to consult will ensure an open and transparent designation system which will formally involve owners and other interested parties in the decision-making process.

254. Sites under consideration for designation can be vulnerable to deliberate damage or destruction, whether following initial inspection or during consultation. Cases are rare, but the proposed interim protection system will ensure that candidate sites will enjoy temporary protection as scheduled monuments or listed buildings once the Welsh Ministers are minded to designate.
255. The proposed independent review of designations will provide a straightforward system which will be more accessible and less costly to owners than the current mechanism for judicial review.

Summary and preferred option

256. The Welsh Ministers do not consider that the current arrangements, under option 1, should be sustained given the constraints that statutory designation can place on the rights of owners to the use of their property.
257. Option 2, which places a duty on the Welsh Ministers to consult, with a consequent need for interim protection, and a duty to carry out an independent review of any decisions, is the preferred option. It will put in place a transparent system of designation and a straightforward process of review.

Table 2 — Summary of costs for preferred option 2.

	Current costs	Future costs	Comments
The Welsh Government	Nil	£670 per annum	Additional digital mapping stage
	Nil	£6,750 per annum	Review
LPAs	N/A	£670 per annum	Additional digital mapping stage
Owners	N/A	£0 to £2,000 per case	Optional request for designation review

Reform of the scheduled monument consent process (sections 5–10)

Options

258. Two options were considered:
- Option 1 — Do nothing and maintain the existing SMC procedures.
 - Option 2 — Streamline SMC procedures and harmonise them with those for LBC and planning controls.

Option 1 — Do nothing and maintain the existing SMC procedures.

259. Consideration was given to maintaining the status quo for the SMC processes that have remained effectively unchanged since first introduced in 1979. Almost

all works that would have a physical impact on the protected area of a scheduled monument, including works of like-for-like repair, require SMC from the Welsh Ministers. The number of SMC applications has been relatively consistent in recent years at some 110 annually. All are dealt with by Cadw for the Welsh Ministers. Applications are made on a form prescribed by secondary legislation. Once an application is received, Cadw will issue an interim decision letter with any proposed conditions, which the applicant can accept or reply to with further representations before the final decision letter is issued. Before issuing the final decision, the Welsh Ministers must also either arrange a public local inquiry or provide the applicant with the right to a hearing before a person appointed by the Welsh Ministers. The last public inquiry held was in 2003.

Option 2 — Streamline SMC procedures and harmonise them with those for LBC and planning controls.

260. Under this option there would be a number of changes to the SMC procedures with the aim of simplifying them or harmonising them with parallel processes in relation to LBC or planning permission. There would also be an extension of the existing power to carry out archaeological excavations, but without the need to obtain the owner's consent when a monument is at risk of imminent damage or destruction. The main changes are:

- a power for the Welsh Ministers to issue SMC other than in writing;
- a simplified SMC process where, if all parties agree, works may be authorised by the Welsh Ministers without the need for an application or interim decision letter;
- the retrospective grant of SMC for unauthorised works to bring arrangements in line with those for LBC and planning permission;
- the removal of an applicant's automatic right to a hearing before the determination of an SMC application; and
- a power to refuse to entertain repeat applications for SMC where a previous application for similar works was refused.

Costs

Option 1 — Do nothing and maintain the existing SMC procedures.

261. This option maintains the status quo and would not result in any additional costs or savings.

Option 2 — Streamline SMC procedures and harmonise them with those for LBC and planning controls.

The Welsh Government

262. The power to issue SMC by means other than in writing will regularise the use of electronic communications. In only around 15 per cent of the 110 applications for SMC in 2012 were paper documents submitted and issued.

Cost savings will be limited to a small saving in stationery and postage costs of less than £20 per annum.

263. The power would also support the introduction of a simplified, e-mail-based SMC process for straightforward cases. This process would not usually require the applicant to complete an application form. Instead, where, following discussions, both the applicant and Cadw agree, consent would simply be issued authorising specified works. The standard cost for Cadw of processing and issuing an SMC is some £86.20 plus any travel expenses, which would be reduced to £72.20 plus travel under the simplified system — a saving of £14 per case. It is estimated that up to a third of SMC applications (36 per year) could be managed under this process resulting in an annual saving of some £504. This is only a small saving, but, in the view of the Welsh Government, the key advantage is that, by eliminating the need for applications and interim decision letters and authorising works immediately, some owners will be encouraged to carry out modest works to monuments to benefit their conservation.
264. It is anticipated that the shortened SMC procedure will be used at the discretion of the Welsh Ministers where it is appropriate and amendments to online guidance or published material will not be necessary.
265. The power to allow the Welsh Ministers to grant SMC for works already executed would only be used exceptionally, in order to avoid fostering the impression that SMC is not an essential precondition for any works to a scheduled monument. Cadw estimates that there would be no more than two such retrospective grants annually. The cost of each case would be £86.20, giving an annual additional cost to the Welsh Ministers of £172.40. However, retrospective consent is often likely to be accompanied by SMC for continuing works, so costs are likely to be broadly neutral.
266. The removal of the automatic right of SMC applicants to a hearing before a person appointed by the Welsh Ministers could also result in a small saving if the Welsh Ministers decide that written representations, rather than a hearing or public local inquiry, are appropriate. In practice, applicants only occasionally invoke this right; it was last exercised in Wales in 2003. Disagreements are usually resolved through informal dialogue, so it is anticipated that the Welsh Ministers will only have to determine the most suitable way to receive an applicant's representations once in the next 5 to 10 years.
267. The power to refuse to entertain an application for SMC where a similar application has been refused in the previous 2 years is likely to be used extremely rarely. It would save up to £86.20 plus any travel in each case and might be employed once every 5 to 10 years.
268. There will also be small additional costs for Cadw for training and for amending and updating published and online guidance to reflect the changes to the SMC process. This is estimated to cost less than £200 and will be subsumed within existing workloads and budgets.

Owners

269. Owners will realise a small saving from the simplified SMC process since they will not necessarily have to complete an application form or respond to an interim decision letter. However, since the procedure will only apply to simple proposals, there would not have been significant costs for individual owners. Based on the time needed to complete and submit an application and to respond by post to an interim decision, there would be a saving of some £10 per case or up to £360 per annum over all.

Local planning authorities

270. Most LPAs have general information about scheduled monuments on their websites which may require some amendment or editing as part of ongoing updating at a cost of less than £15 for each authority.

Benefits

Option 1 — Do nothing and maintain the existing SMC procedures.

271. The current SMC process is effectively common to England and Wales and is well understood by heritage professionals. The guidance and literature relating to the current process are readily available in both printed and electronic form from Cadw and through links to its website from other organisations (e.g., LPAs) and would not require any updating.

Option 2 — Streamline SMC procedures and harmonise them with those for LBC and planning controls.

272. This option would align SMC procedures more closely with those for LBC and planning permission by allowing the Welsh Ministers to:

- grant retrospective consent for unauthorised works;
- refuse to consider repeat applications for works that have previously been refused; and
- determine the most appropriate means by which any dispute can be heard by an independent person before an SMC application is determined.

273. The option would also allow the Welsh Ministers greater flexibility in authorising proposed works, chiefly for small-scale repair or improved management. Although it will bring some savings, its key benefit is that it will permit the authorisation of beneficial works in instances where an otherwise willing owner does not wish to engage in the bureaucracy of a formal SMC application.

Summary and preferred option

274. Option 1 continues the existing arrangements, which are largely fit for purpose despite the fact that the procedures have effectively remained unchanged for 35 years. Option 2 is, however, the preferred option as it will help to

modernise some elements of the SMC process and align them more closely with current arrangements for the parallel processes of LBC and planning permission.

Table 3 — Summary of costs for preferred option 2.

	Current costs	Future		Comment
		Costs	Savings	
The Welsh Government	N/A		£504 per annum	Electronic and simplified SMC process
	N/A	£172 per annum		Retrospective SMC
	N/A	£200 (one-off cost)		Guidance revisions
Owners	N/A		£360 per annum	Simplified SMC procedure

Introduction of enforcement and temporary stop notices for scheduled monuments (sections 12–13)

Options

275. Two options have been considered:

- Option 1 — Do nothing.
- Option 2 — Introduce powers to serve TSNs and enforcement notices against unauthorised works to scheduled monuments.

Option 1 — Do nothing.

276. Under this option the long-standing legislative arrangements in the 1979 Act would continue to apply. It is a criminal offence to damage or to carry out unauthorised works to a scheduled monument. It is also an offence to fail to comply with the conditions attached to an SMC granted by the Welsh Ministers, which sets out the manner by which works to a monument must be carried out.

277. Cadw's records show that almost all of the 119 recorded instances of damage to scheduled monuments between 2006 and 2012 were resolved informally. In a small number of cases, however, those engaged in unauthorised works were unwilling to cease them entirely and in one instance in 2007, which eventually resulted in a successful prosecution, police involvement was needed before works stopped. Over the same period, there were 17 cases of failure to comply with SMC conditions, which equates to 2 to 3 cases per annum.

278. Under this option, the Welsh Ministers would continue to have no power to stop unauthorised works other than by seeking an injunction or requesting assistance from the police. Similarly, where works have already taken place,

they would have no powers to require works to repair or mitigate the damage. The only recourse would be to seek a prosecution and, if successful, a compensation order to cover the cost of remedial works.

279. This option does not meet the Welsh Ministers' policy objectives for the protection of the historic environment since it continues to provide no straightforward means to address problems caused by unauthorised works. As such, the arrangements for scheduled monuments are out of line with provisions for enforcement powers contained in parallel 1990 Planning Acts, including that for listed buildings.

Option 2 — Introduce powers to serve TSNs and enforcement notices against unauthorised works to scheduled monuments.

280. Stop notices and enforcement powers under the Town and Country Planning Act 1990 are widely used in development control. Enforcement powers are already available in respect of listed buildings and this Bill also proposes to extend these to provide powers for the service of TSNs.

281. This option would provide the Welsh Ministers with statutory powers to prevent illegal works to scheduled monuments by enabling them to stop ongoing unauthorised works and to require repairs or remedial works following such works. Cadw envisages that such powers would only be used in the small number of cases that cannot be resolved voluntarily, with the potential use of statutory enforcement acting as a deterrent to those unwilling to enter into such voluntary arrangements.

Costs

Option 1 — Do nothing.

282. This option would not introduce any additional costs or savings. However, should the owner refuse to halt unauthorised works voluntarily, there is potential for loss or damage to monuments of national importance at an unquantifiable cost. It also continues arrangements under which additional costs may arise from any need to involve the police to ensure that works stop. If works do not cease, there is an increased likelihood of more severe damage and a greater need for prosecution with attendant justice costs. In an instance of unauthorised works to Offa's Dyke in 2013, Cadw had to fund archaeological investigations and an engineering design for repairs at a cost of some £10,000. Since the police decided not to pursue a prosecution and in the absence of statutory powers of enforcement under the 1979 Act, Cadw must now seek other means to recover its costs directly or indirectly from the owner.

Option 2 — Introduce powers to serve TSNs and enforcement notices against unauthorised works to scheduled monuments.

283. The use of TSNs will be discretionary. Cadw's previous experience is that those carrying out unauthorised works will almost always stop voluntarily when advised that the works are illegal. This experience is supported by

evidence from Scotland. While TSNs were introduced there in 2011, it is understood that none has yet been issued. They are nonetheless seen in Scotland as an effective legal sanction and deterrent.

284. Non-compliance with a TSN will be a new offence. However, it is not expected that this offence will be prosecuted in isolation; it is only likely to constitute an additional charge in a prosecution for unauthorised works. As such, it is not envisaged that the provision will lead to any increased costs for the justice system.

The Welsh Government

285. Based on the experience of erecting a non-statutory stop notice during unauthorised works at Offa's Dyke in 2013, Cadw estimates the cost of preparing and erecting a bilingual notice on site at no more than £350. It is anticipated that no more than one notice will be issued annually.
286. Scheduled monument enforcement notices will be more complicated to draft and Cadw estimates that, depending on the complexity of the case, staff costs will vary between £350 and £1,400, excluding any travel time. Given that the perpetrators of unauthorised works will generally carry out mitigation works voluntarily, it is expected that one enforcement notice will be issued annually. There should not be substantive additional costs, however, because, following unauthorised works, Cadw staff already inspect the monument, assess any damage and write to the owner setting out works necessary to mitigate the situation.

Benefits

Option 1 — Do nothing.

287. This option would not introduce any new benefits.

Option 2 — Introduce powers to serve TSNs and enforcement notices against unauthorised works to scheduled monuments.

288. Statutory enforcement powers and TSNs are only likely to be used infrequently and as a last resort. However, the Welsh Government considers that both powers are necessary to address a widely perceived weakness in current legislation, and bring the scheduled monument regime into line with parallel, more up-to-date powers for listed buildings and general development controls. It will also put in place formal mechanisms to set out any works necessary to repair or mitigate the effects of unauthorised works and to recover any costs where the remedial works are carried out by the Welsh Ministers.

Summary and preferred option

289. The Welsh Government considers option 1 to be unsatisfactory. It will bring no change to the current situation and leave the Welsh Ministers without statutory powers to stop illegal works or, subsequently, to require works to

mitigate their effect. Option 2, on the other hand, would provide appropriate and proportionate statutory powers, which would better align the protection of scheduled monuments of national importance with that for listed buildings and general development controls.

Table 4 — Summary of costs for preferred option 2.

	Current costs	Future costs	Comment
The Welsh Government	N/A	£350 per annum	Service of TSNs
	N/A	£350 to £1,400 per annum	Enforcement notices

Amendments to the offences and defences in sections 2, 28 and 42 of the 1979 Act (sections 15–17)

Options

290. Three options have been considered:

- Option 1 — Do nothing and retain current offences and defences.
- Option 2 — Make damage and unauthorised works to scheduled monuments strict liability offences.
- Option 3 — Amend the offences short of strict liability and the defences to reduce the availability of the ‘ignorance defence’.

Option 1 — Do nothing and retain current offences and defences.

291. Under this option, the relevant provisions of the 1979 Act would stand.

292. There were some 119 cases of damage to scheduled monuments recorded by Cadw between 2006 and 2012. The majority involved minor damage and only one case was investigated by the police, resulting in a successful prosecution for unauthorised works.

293. Most cases of significant damage took place on agricultural holdings, where there are already significant financial penalties for cross-compliance breaches of agri-environmental scheme rules.

294. Cadw has no record of any police investigation or prosecution under the 1979 Act relating to the unauthorised use of metal detectors.

295. However, Cadw and the Welsh Ministers have faced criticism over the lack of prosecutions for unauthorised works and damage to scheduled monuments, particularly after the serious damage to Offa’s Dyke in 2013, where, in spite of a 10-month investigation, prosecution was not pursued due to lack of

evidence. The Welsh Ministers do not consider option 1 satisfactory since it does not provide an adequate level of protection for scheduled monuments.

Option 2 — Make damage and unauthorised works to scheduled monuments strict liability offences.

296. This option would make undertaking unauthorised works on or causing damage to a scheduled monument a strict liability offence. This would bring the protection of scheduled monuments into line with that for listed buildings, where carrying out unauthorised works is an offence, unless the works are minimal and necessary for health and safety or the preservation of the building.
297. The Welsh Ministers do not consider this to be a reasonable or viable option. At the time of a monument's scheduling, the owner will be notified and a land charge imposed. Subsequently, Cadw staff will make occasional monitoring visits. However, unlike a listed building, the location or extent of a scheduled monument may not be readily apparent, particularly if it consists of buried remains. In the view of the Welsh Ministers, a strict liability offence would not be proportionate. Owners and others might inadvertently or accidentally stray into a protected area where they may have no reason to suspect the existence of a scheduled monument. In such circumstances, there must be some latitude to protect individuals, rather than criminalising their actions with consequent impacts on the rights of owners to the enjoyment of their possessions.

Option 3 — Amend the offences short of strict liability and the defences to reduce the availability of the 'ignorance defence'.

298. This option would make the criminal offences and defences more effective in protecting monuments by placing a greater responsibility on those carrying out works to have taken reasonable steps to check whether a scheduled site would be affected. The option stops short of imposing a strict liability offence, but limiting the availability of the 'ignorance defence' would allow the prosecution of a person who ought to have known that a site may be protected and failed to take reasonable steps to check.
299. Between 2000 and 2013, Cadw's records show that four cases of significant damage were investigated. Only one proceeded to prosecution, with the police or the Crown Prosecution Service deciding not to pursue the others on the basis of a lack of evidence. Cadw believes that at least one of these cases would have resulted in prosecution under this option.

Costs

Option 1 — Do nothing and retain current offences and defences.

300. This option would not result in any additional costs or savings. It would, though, not address the issue of costs arising from abortive investigations of offences, which might have been recoverable following successful convictions.

Option 2 — Make damage and unauthorised works to scheduled monuments strict liability offences.

301. Cadw's records show that between 2006 and 2012 there were 119 recorded instances of damage to scheduled monuments, mostly minor or unintended. A strict liability offence would mean that all would potentially be prosecutable, although the public interest tests applied by the Crown Prosecution Service would mean that only a fraction would be considered for prosecution. A strict liability offence would allow the Welsh Ministers, the police and the Crown Prosecution Service less flexibility to investigate and prosecute in only the most serious cases, with consequent increases in costs arising from the investigation of more minor infringements.
302. It is difficult to predict how many damage cases would lead to prosecution if strict liability were introduced. As noted above, four damage cases were considered serious enough to warrant investigation by the police between 2000 and 2013 and it can be assumed that this would represent the minimum number of cases that would have been prosecuted.
303. There has been no specific research into the costs of damage or unauthorised works to scheduled monuments or any subsequent justice costs. Research by the Home Office²⁴ has considered the economic and social costs of crime with the nearest comparative crime, criminal damage, estimated, on average, to cost £866 (at 2003 prices), with the majority of this cost related to the physical and emotional impact on the victim. Quite apart from the fact that, in many cases of damage to scheduled monuments, it would be difficult to identify a victim, this estimated sum is not helpful since it falls far below what is likely to be required for repair or remediation in most circumstances.
304. The potential range of realistic costs, based on previous prosecutions, is considered in more detail under option 3.

Option 3 — Amend the offences short of strict liability and the defences to reduce the availability of the 'ignorance defence'.

305. Only one of the four cases of damage to a scheduled monument investigated by police between 2000 and 2013 was successfully prosecuted. An analysis by Cadw has shown that two others were dropped by the police on the basis of lack of evidence that the accused knew of the monument's scheduled status, while the third was not pursued by the Crown Prosecution Service on the same grounds. Cadw's view is that at least one of those cases is likely to have proceeded to prosecution under the proposed amendments. On this basis, Cadw considers that the number of prosecutions for damage or unauthorised works to a scheduled monument would increase by an average of up to one additional case over a five-year period.

²⁴ Home Office Online Report 30/05 (HOOR 30/05) and Home Office Research Study 217 (HORS 217).

306. It is difficult to monetise the likely cost of additional prosecutions given the small number of comparable prosecutions across the UK and the potential for wide variations in scale and the consequent time needed for police investigations. Cases may be heard before either a magistrates' court or the Crown court although most cases are likely to be heard at a magistrates' court as was the last case prosecuted in Wales in 2007. The average staff and judicial costs per day is some £1,522 for the Crown court and £1,111 for a magistrates' court at 2013/14 prices.²⁵ However, the court time necessary for each prosecution will vary according to the seriousness and complexity of the case. Therefore, a more meaningful indication of the range of potential costs may be the prosecution costs awarded in previous cases. They ranged from the £60 prosecution costs awarded by the magistrates' court in the 2007 case in Wales, where the owner pleaded guilty and witnesses were not required to appear, to costs of £7,500 (plus a £2,500 fine and up to £40,000 in voluntary mitigation works) awarded by the Crown court in 2012 in respect of more serious damage to a scheduled monument in Somerset.
307. The unauthorised use of metal detectors on scheduled monuments is not uncommon and minor damage is regularly noted retrospectively during site inspections, but Cadw has no record of any prosecution under the 1979 Act. The potential for prosecutions will remain, but they are not anticipated.
308. For this option to be effective, those planning to carry out works or use a metal detector must have easy access to information on the location and extent of scheduled areas. The Welsh Government is developing a publicly available mapping portal that will be searchable and will show the location and boundaries of scheduled monuments and other designated historic assets. The website will be fully available in 2016. The development of this portal is independent of this Bill, so the development costs are not included here.
309. Publicity will be required for these legislative changes through press releases aimed at relevant magazines, websites, local authorities and owner-representative bodies such as the farming unions. This would be supported by more detailed information on the Cadw website and the total cost is estimated to be less than £500.

Benefits

Option 1 — Do nothing and retain current offences and defences.

310. This option would have no additional benefits and would not address the manifest difficulties that have hindered successful prosecutions for unauthorised works and damage to scheduled monuments. There would remain a limited deterrent to such offences other than potential fines under agri-environmental schemes. The lack of successful prosecutions under the existing legislation has led to widespread criticism of the Welsh Government.

²⁵ HM Courts & Tribunals Service, *Annual Report and Accounts 2013-14*.

Option 2 — Make damage and unauthorised works to scheduled monuments strict liability offences.

311. This option would have the benefit of rendering any unauthorised works or damage to a scheduled monument a clear-cut offence, making prosecution theoretically more straightforward. It would, however, criminalise any unauthorised actions placing a disproportionate burden on owners.

Option 3 — Amend the offences short of strict liability and the defences to reduce the availability of the ‘ignorance defence’.

312. Amending the offences and defences was almost universally welcomed during consultation. The option would increase the likelihood of successful prosecution in respect of serious and deliberate damage by lessening the requirement for the prosecution to provide clear, usually documentary, evidence that the accused had been notified of the status of the site. The proposal also stops short of introducing a strict liability offence and, as such, is proportionate in that it lessens the risks for owners and others of being prosecuted for accidental infringements.

Summary and preferred option

313. The consultation on the proposed amendments supported the Welsh Government’s view that the current offences and defences under the 1979 Act limited the potential for successful prosecutions for damage and unauthorised works to scheduled monuments. As such it is considered that continuing the existing arrangements under option 1 are not tenable.

314. The introduction of a strict liability offence under option 2 is considered by the Welsh Government to be disproportionate since it would criminalise any damage or unauthorised works to scheduled monuments, even when the location or extent of the monument may not be visually apparent.

315. Option 3 would place a greater weight on those carrying out works or using a metal detector to take reasonable steps to check whether a protected site would be affected. The Welsh Government considers that this change will be proportionate and, while not unreasonably affecting the interests of landowners, will increase the likelihood of successful prosecutions for serious and deliberate damage with a consequent deterrent effect.

Creation of a statutory register for historic parks and gardens (section 18)

Options

316. Three options have been considered:

- Option 1 — Do nothing and continue the voluntary approach to inclusion on the '*Register of Historic Parks and Gardens*'.²⁶
- Option 2 — Designate parks and gardens using existing scheduling and listing powers.
- Option 3 — Place the *Register of Historic Parks and Gardens* on a statutory basis.

Option 1 — Do nothing and continue the voluntary approach to inclusion on the *Register of Historic Parks and Gardens*.

317. Under this option, the *Register of Historic Parks and Gardens* would continue to be published with sites included only where owners have given their express approval. Currently the register includes 386 historic parks and gardens, but 14 complete sites have been omitted entirely because the owner's permission could not be obtained while parts of a further 7 parks and gardens have been excluded for the same reason. Although these cases are not numerous, they have compromised the register's ability to present a comprehensive picture of the known historic parks and gardens of national interest.
318. Inclusion on the register does not confer any statutory protection but *Planning Policy Wales*²⁷ requires LPAs to protect registered historic parks and gardens and their settings when considering planning applications. As a result, the Welsh Government is consulted on planning applications for works such as new buildings, car parks and structural landscaping as well as on any changes to listed structures. Additional controls are also imposed through tree preservation orders, the protection of trees in conservation areas and tree-felling licencing. However, there are no restrictions on an owner making changes to a park or garden where the works constitute permitted development in the form of planting alterations or the felling of unprotected trees. Nonetheless, there is no firm evidence that the existing system of controls is not effective. No park or garden has been removed from the register since the county volumes were published between 1994 and 2007. Indeed most historic parks and gardens are not generally subject to pressures for change; where change is likely to be substantive and to affect their character, controls are usually in place through the need for planning permission.
319. The voluntary basis for the register does mean that existing or new owners of historic parks and gardens could withdraw their agreement, requiring the removal of significant sites with a consequent reduction in protection from inappropriate change.
320. During consultation and engagement on the Bill, a number of people voiced concern about the sustainability of the voluntary parks and gardens register in the future should the Welsh Government decide to remove its support.

²⁶ This abbreviated form of the title will be used throughout. The full title is *Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales, Part 1: Parks and Gardens*, Cadw/ICOMOS UK (1994 to 2007).

²⁷ *Planning Policy Wales*, Welsh Government.

Option 2 — Designate parks and gardens using existing scheduling and listing powers.

321. This option would use existing listing and scheduling designations to protect historic parks and gardens. Many existing buildings and structures in historic parks and gardens are already listed, including buildings, statues and garden structures, but this category of designation cannot be applied to plantings, flower beds or trees.
322. Scheduling is also already used to protect parts of registered historic parks and gardens — mainly earlier archaeological sites and features which survive within the grounds, but also some ruinous garden features. Some gardens are wholly scheduled due to their historic significance, but these are relict gardens which are no longer in use.
323. Because it aims to protect the archaeological integrity of sites that are archaeologically or historically significant but no longer in economic use, scheduling imposes tight controls by requiring prior consent for almost all works within the designated area. Changes through secondary legislation could provide blanket consent for domestic and other gardening works, but works, for instance, to install new structures, lay paths, replant or uproot trees, or repair ditches would require full SMC. This would place an unacceptable level of constraint on owners and interfere with the effective management and use of historic parks and gardens. This option was, therefore, rejected.

Option 3 — Place the *Register of Historic Parks and Gardens* on a statutory basis.

324. This option would place a statutory duty on the Welsh Ministers to maintain and enhance the register. All historic parks and gardens that meet the published criteria would be included on the register and be subject to the same controls. It would also ensure that the *Register of Historic Parks and Gardens* is maintained for future generations. The option would also place a duty on the Welsh Ministers to notify the owners and/or occupiers of a historic park or garden so that they are aware of the registration and its implications.

Costs

Option 1 — Do nothing and continue the voluntary approach to inclusion on the *Register of Historic Parks and Gardens*.

325. The continuation of the existing arrangements would not impose any additional costs. However, the Welsh Ministers consider that there is a need for updated guidance on the management of historic parks and gardens.

Option 2 — Designate parks and gardens using existing scheduling and listing powers.

326. A detailed analysis of costs has not been prepared as the Welsh Ministers do not consider that the close controls imposed on owners by scheduling would be acceptable.

The Welsh Government

327. However, as an indication, it costs the Welsh Government approximately £630 to schedule a monument.²⁸ The designation of the 386 parks and gardens on the register would therefore cost in the region of £250,000 and would be completed over a two-year period. As part of the designation process, owners would have an opportunity to request a review of the Welsh Ministers' decision to designate. It is estimated that 5 per cent of all designations would be reviewed, which would cost in the region of £90,000 spread over the two years.
328. If a formal designation process is to be adopted, a system of consent would also need to be introduced. Most continuing horticultural works will be automatically authorised by class consent,²⁹ but any new works such as extensions to flower beds or the planting of new trees would require SMC. It is estimated that this would result in a minimum of 30 applications for consent each year, and based on Cadw's administrative costs of £86.20 plus travel per SMC, this would cost in the region of £2,600 per annum.

Owners

329. Costs for owners would increase under this option. Inclusion on the register currently only affects owners if they apply for planning permission, when registration of a park or garden becomes a material consideration. Under this option, owners would need to apply for SMC, as well as discuss their proposals with Cadw to ensure that they are satisfactory. It is likely that the costs for owners will be broadly similar to those for the Welsh Ministers, amounting to a total cost of some £2,600 per annum.

Option 3 — Place the *Register of Historic Parks and Gardens* on a statutory basis.

The Welsh Government

330. The primary costs for this option would fall on the Welsh Ministers and arise from the duty to notify all owners and occupiers of inclusion on the register. There are currently 382 sites included on the *Register of Historic Parks and Gardens* in a variety of types of ownership as summarised, based on Cadw's current knowledge, in Table 5.
331. Cadw estimates that the notification procedure, plus any necessary follow-up site meetings to resolve queries, will require an annual staff cost of some 0.5 whole time equivalent (WTE) at Management Band 2, plus a similar level of administrative support at Management Band 1. It is proposed that the process will be carried out over a two-year period giving staff and travel costs of some £21,200 in 2016–2017, rising to some £22,200 the following year. Once this phase of work has been completed there would be no additional ongoing costs.

²⁸ Cadw estimate based on Welsh Government 'Pay Band Costs and Standardisation of DRC Forecasting'

²⁹ The Ancient Monuments (Class Consents) Order 1994

Table 5 — Ownership of historic parks and gardens in Wales.

County	Ownership type								
	Single						Divided	Multiple	Totals
	WG	LA	CB	HO	IO	PO			
Gwent	1	12	4	11	5	22	8	1	64
Clwyd, excl. part of Conwy/Powys	2	5	6	24	3	24	2	3	69
Conwy, Ynys Mon, and Gwynedd	1	5	6	12	7	25	6	3	65
Powys	1	4	4	14	6	20	2	1	52
Glamorgan	4	36	4	5	4	8	5	4	70
Carms, Cere, and Pembs	4	5	10	12	5	17	10	3	66
Totals	13	67	34	78	30	116	33	15	386

Key:

WG: The Welsh Government or other government bodies, e.g., NHS.

LA: Local authority, primarily urban and country parks.

CB: Charitable bodies, largest number with the National Trust.

HO: Hereditary owners who have held the estate for 100 years or more.

IO: Institutional owners, mainly hotels, schools and golf courses.

PO: Private owners who have held the site for less than 100 years.

Divided: Where a park and/or garden is held by two owners.

Multiple: Sites with more than two owners.

332. The Welsh Government considers that there is a need for specific guidance for owners and LPAs on the protection and management of historic parks and gardens. It is estimated that this will cost up to £5,000 and will be produced in 2016–2017.

333. The Welsh Government is also developing a publicly available, searchable, online mapping portal that will show the location and boundaries of registered historic parks and gardens. This will help to make successive owners aware of the registration of a historic park or garden. The development of this tool is independent of the Bill, so the development costs are not included here.

Local planning authorities and owners

334. The addition of 14 complete sites and 7 additional parts to existing entries on the register will mean that national planning policies for the protection of historic parks and gardens will thereafter apply to them. Additional consideration will consequently be needed when making and determining any planning application. Should a planning application be made for any of the additional sites to be included on the register, the LPA will need to include Cadw and any nominated advisory body in its list of consultees.

Benefits

Option 1 — Do nothing and continue the voluntary approach to inclusion on the *Register of Historic Parks and Gardens*.

335. Continuing the existing arrangements will bring no new benefits but would not address the problems presented by a small number of owners opting out of voluntary inclusion in the register.

Option 2 — Designate parks and gardens using existing scheduling and listing powers.

336. The Welsh Ministers are already subject to a duty to designate buildings and structures that meet the criteria for listing. The scheduling of all or part of a park and/or garden would have the benefit of imposing tight regulation on changes or works.

Option 3 — Place the *Register of Historic Parks and Gardens* on a statutory basis.

337. Placing a duty on the Welsh Ministers to compile and maintain the *Register of Historic Parks and Gardens* will ensure that the arrangements established under the current voluntary regime will be sustained for the future. The inclusion of all historic parks and gardens, including the small number for which owners withheld permission when the county volumes were published between 1994 and 2007, will ensure equal treatment under the development control system. A duty on the Welsh Ministers to notify owners and occupiers that sites have been included on the register, together with up-to-date guidance and online mapping, will ensure that all are fully aware of the potential constraints on their land under the development control system.

Summary and preferred option

338. The Welsh Ministers consider that the current voluntary arrangements provided for in option 1 are no longer viable now that the *Register of Historic Parks and Gardens* has become firmly embedded in national and local planning policies over the two decades since the first county volume was published.
339. The only policy gain from option 2 would be the imposition of tighter regulations on owners by requiring prior consent for any change to a park or garden over and above the constraints already imposed by the planning, listing and scheduling regimes. The Welsh Ministers do not have evidence that such close controls are necessary on the 386 parks and gardens already registered. Such broad, additional regulation would place an inappropriate constraint on the rights of owners to enjoy their property and require an unnecessary, and complex, system to administer it. This option has, therefore, not been considered further.

340. Option 3 would ensure that the *Register of Historic Parks and Gardens* is a comprehensive and sustainable resource for the appropriate management of Wales' historic environment in the future. It would also result in a transparent and equitable system of constraints for the owners and occupiers affected. The notification process would involve additional costs for the Welsh Government, but these will be achievable within existing programme budgets.

Table 6 — Additional costs to the Welsh Government for preferred option 3

	2016/17	2017/18	2018/19	2019/20	2020/21
Staff costs	£18,700	£19,700	—	—	—
Travel	£2,500	£2,500	—	—	—
Guidance	£5,000	—	—	—	—
Total	£26,200	£22,200	—	—	—

Power of entry for the archaeological excavation of monuments in imminent danger of damage or destruction (section 19)

Options

341. Two options were considered:

- Option 1 — Do nothing and continue with existing arrangements which require the owner or occupier to give consent before archaeological excavation can take place.
- Option 2 — Provide the Welsh Ministers with a power of entry to carry out archaeological excavation without the consent of the owner or occupier when they believe an ancient monument is at imminent risk of damage or destruction.

Option 1 — Do nothing and continue with existing arrangements which require the owner or occupier to give their consent before archaeological excavation can take place.

342. The Welsh Ministers already have various statutory powers of entry to inspect scheduled or ancient monuments and may carry out recording. However, they may only undertake archaeological excavation with the prior permission of the owner or occupier. As a result, there is a risk that, if the owner is unknown or cannot be contacted, a monument may be damaged or destroyed in the interim with a consequent loss of archaeological information.

Option 2 — Provide the Welsh Ministers with a power of entry to carry out archaeological excavation without the consent of the owner or occupier when they believe an ancient monument is at imminent risk of damage or destruction.

343. This option would allow the Welsh Ministers to carry out archaeological excavations without the owner or occupier's prior consent but only if they believe that the monument is at imminent risk of damage or destruction. The power is only likely to be used in exceptional circumstances. Cadw advises

that in such circumstances owners or occupiers will usually give their consent freely and it maintains comprehensive details of owners and occupiers. However, there are a small number of sites where the ownership is unknown or unclaimed. Situations can also arise where unauthorised works have taken place or are underway, leaving a monument vulnerable to damage, and there are problems in contacting the owner. For example, when Offa's Dyke was damaged in 2013, the site had recently been sold and Cadw was unable to identify the new owner through enquiries with neighbours.

Costs

Option 1 — Do nothing and continue with existing arrangements which require the owner or occupier to give their consent before archaeological excavation can take place.

344. This option will not give rise to any additional costs, but could potentially result in the unquantifiable cost of the loss of an archaeologically or historically significant ancient monument and the loss of archaeological information.

Option 2 — Provide the Welsh Ministers with a power of entry to carry out archaeological excavation without the consent of the owner or occupier when they believe an ancient monument is at imminent risk of damage or destruction.

The Welsh Government

345. Under this option, any archaeological excavation carried out without the consent of the owner or occupier would have to be funded by the Welsh Ministers. The costs of such works are impossible to predict since they will vary according to the needs of the site, ranging from minor test pitting and recording, at a cost of no more than £70, through, potentially, to significant archaeological excavation. In the case of the 2013 damage at a scheduled section of Offa's Dyke, the archaeological excavation cost some £6,000, but this would represent the upper end of the scale of potential archaeological works.

346. However, the use of the power will be at the discretion of the Welsh Ministers and, as noted above, any necessary excavation will normally be carried out by agreement without the need for its use. In cases of unauthorised works to scheduled monuments, where the owner refuses to meet the costs of any necessary excavation the proposed scheduled monument enforcement notices may be used to require the works to be carried out.

347. It is anticipated that the power would be used exceptionally and most often in cases where a monument has been left in a vulnerable condition after unauthorised works. In such circumstances, the works carried using the statutory power will be limited to those immediately necessary and, as such, are likely to be at the lower end of the range of costs for excavation. Where the risk to a scheduled monument arises from unauthorised works, the minimal preliminary excavation would then be followed up at the cost of the owner following a scheduled monument enforcement notice or, if required, a successful prosecution.

Owners

348. Any emergency excavation carried out under these provisions would be undertaken at the expense of the Welsh Government and the land reinstated.

Benefits

Option 1 — Do nothing and continue with existing arrangements which require the owner or occupier to give their consent before archaeological excavation can take place.

349. In the majority of instances where a monument is at imminent risk of damage or destruction, the owner or occupier will provide consent for works to take place.

Option 2 — Provide the Welsh Ministers with a power of entry to carry out archaeological excavation without the consent of the owner or occupier when they believe an ancient monument is at imminent risk of damage or destruction.

350. This option would provide the Welsh Ministers with the power to carry out archaeological excavation without the owner or occupier's prior consent. This power would only be exercised on an exceptional basis when there is an imminent threat that a scheduled monument will be damaged or destroyed, in order to ensure that archaeological information from a nationally important site is not lost.

Summary and preferred option

351. Option 1 continues the existing arrangements and is likely to be satisfactory in most situations. However, where there is an imminent threat and the owner cannot be identified or contacted, it would not address the problem of damage to, or loss of, a nationally important scheduled monument and its archaeological information due, for example, to collapse, erosion or unauthorised works.

352. Option 2 addresses this weakness and is the preferred option. The Welsh Government considers that the power, which would impact on the rights of landowners, would only be used exceptionally. The archaeological works would be limited to those urgently necessary and would be at the Welsh Government's own cost.

Extension of the definition of a scheduled monument (section 22)

Options

353. Three options have been considered:

- Option 1 — Do nothing.

- Option 2 — Revise the statutory definition of what may be scheduled to include any monument which the Welsh Ministers consider to be of national importance for its historic, architectural, traditional, artistic or archaeological interest.
- Option 3 — Extend the definition of what may be scheduled to include all sites that provide evidence of past human activity.

Option 1 — Do nothing.

354. Under this option the scheduling of ancient monuments would continue to employ the existing definition in the 1979 Act, which restricts statutory designation to sites which are structures or works.
355. The definition has not been amended since the Act was passed and has allowed the scheduling of over 4,000 sites in Wales. The process is well understood and largely uncontroversial since almost all of those sites are archaeological sites, ruins or buildings for which there is little prospect of economic use.
356. While the current definition is effective in allowing the scheduling of the vast majority of important sites, artefact scatters and other archaeological deposits devoid of structures or works fall outside the existing definition and, even if nationally important, cannot be scheduled. These are chiefly early, and extremely rare, sites from the Palaeolithic and Mesolithic periods where human activity, occupation and industry are evidenced only by artefact scatters or votive offerings.

Option 2 — Revise the statutory definition of what may be scheduled to include any monument which the Welsh Ministers consider to be of national importance for its historic, architectural, traditional, artistic or archaeological interest.

357. This option would make any site, feature, structure or area of historic or archaeological significance eligible for scheduling and, thereby, protection under the statutory SMC regime.
358. The option would allow a huge range of sites to be designated — notionally, a substantial proportion of the more than 150,000 individual entries in the four regional HERs might be considered. It might also conflict with other, more appropriate, forms of statutory or non-statutory designation or registration. It could result in pressures for the scheduling of large areas of land, including elements of landscapes on the *Register of Landscapes of Special Historic Interest in Wales*.³⁰ The scheduling of buildings in use would cut across the listing regime and impose an inappropriately restrictive system of controls on owners and occupiers.

³⁰ *Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales, Part 2: Landscapes of Historic Interest in Wales*, Countryside Council for Wales/Cadw/ICOMOS UK (1998 to 2001).

359. Such a broad definition would need to be accompanied by stringent criteria, either set out in secondary legislation or policy documents. There would be opposition from owners to such a wide definition of a monument, and the restrictive system of control on owners and occupiers would be seen as complex, bureaucratic, inefficient and obstructive to normal work practices.

Option 3 — Extend the definition of what may be scheduled to include all sites that provide evidence of past human activity.

360. The option would allow the scheduling, protection and appropriate management of a relatively small number of sites — probably less than 30 — which do not satisfy the current definition for scheduling but are known to be of national archaeological importance. As such, they are vulnerable to damage and the loss of their archaeological significance, particularly as a result of inappropriate management or use.
361. Extending the definition of what may be scheduled would mean that a small number of owners would be affected by the scheduling of their land. This would impose restrictions by requiring most new works that would disturb the ground or monument to be first authorised by the Welsh Ministers through the granting of SMC. However, a body of ‘class consents’ allows existing usage of a scheduled site, such as grazing, to continue.
362. The definition could potentially allow the scheduling of large areas which have been subject to human activity. In the Preseli Mountains in Pembrokeshire, for example, evidence for prehistoric activity can be found over an extensive area. The Welsh Ministers would need to issue specific criteria to define the artefact scatters and deposits considered to be of national importance that this option seeks to protect; this will ensure that the definition is not widely and inappropriately applied.

Costs

363. The statutory scheduling of ancient monuments has been in place since 1913 and took its current form in 1979, but there has been no substantive research into the impact of scheduling on land values. However, guidance published in 2014 by the Royal Institute of Chartered Surveyors analysed the sale of scheduled monuments, typically smaller sites with archaeological remains or ruins, and concluded that they sold at prices slightly above land value, with an additional premium ranging from 10 to 20 per cent.³¹ The lack of substantive adverse impacts arising from scheduling is supported by anecdotal evidence from Cadw that it is rarely contentious or opposed by owners, unless it would affect a much larger development, such as a wind farm or an opencast mine. The existence of a scheduled monument on farmland can also benefit the owner by attracting additional funding for its appropriate management under agri-environmental schemes such as Glastir.

³¹ ‘Valuation of historic buildings’, RICS information paper, 1st edition, May 2014

Option 1 — Do nothing.

364. There would be no additional costs associated with this option. Scheduling is at the discretion of the Welsh Ministers and Cadw's programme of scheduling of potential sites identified by the surveys it commissions is carried out according to the staff resources available, the significance of the site and the degree to which it is at risk.

Option 2 — Revise the statutory definition of what may be scheduled to include any monument which the Welsh Ministers consider to be of national importance for its historic, architectural, traditional, artistic or archaeological interest.

365. The extension in the range of sites that would follow from an effectively unrestricted criterion for scheduling is impossible to estimate with any precision. Policy definitions on what might be scheduled could be introduced that would reduce the number of possible sites for scheduling. In practice, the Welsh Government would extend the corpus of sites still to be considered as part of the scheduling enhancement programme to accommodate the sites meeting the new definition. Currently, Cadw has virtually completed its assessment of known prehistoric and Roman sites in Wales, and good progress is being made on the assessment of medieval and post-medieval sites and of twentieth-century military sites. Unless constrained by policy definitions, the scheduling enhancement programme would, for all intents and purposes, become open-ended under this option.

The Welsh Government

366. A standard scheduling action costs, in Cadw staff time some £630.00, plus any travel costs. It can be assumed that the sites meeting the scheduling definition would include the 30 sites proposed under option 3. The upper limit of the number of other sites potentially schedulable is difficult to estimate, but would be far less than the 150,000 entries on the HERs as most of these would not be of national importance. A conservative estimate would be that the upper limit would be in the region of 25 per cent of the existing number of scheduled monuments or some 1,000 additional sites. This would mean that the potential additional cost, over the life of the scheduling enhancement programme would be between £19,000 (30 x £630) and some £630,000 (1,000 x £630) plus travel costs. This cost would be over and above the cost of the current scheduling enhancement programme and be incurred over the programme's lifetime.

367. In addition, as the definition proposed for this option would be much more open to interpretation, it is likely that there would be an increase in the number of reviews sought by owners. Based on the number of designation reviews predicted above of some 5 per cent of cases at an individual cost of £2,250,³² the additional costs would range between £3,375 and £112,500.

³² Based on the assumption that an average review relying upon written representations will require three days of a Planning Inspector's time at a rate of £750 per day (see paragraph 245).

368. In 2012, Cadw managed 110 applications for SMC. This number, which has remained relatively steady over the last 5 years, represents works to only a small proportion (some 2.4 per cent) of the over 4,000 monuments currently on the Schedule. If the number of monuments to be scheduled increased dramatically, there would be a knock-on effect on the number of SMC applications that would need to be administered by the Welsh Government. Based on 1,000 additional monuments, with each simple SMC application costing the Welsh Government in the region of £86.20 to administer, this would represent an additional cost of £86.20 x 24 or some £2,070 per annum.

Option 3 — Extend the definition of what may be scheduled to include all sites that provide evidence of past human activity.

The Welsh Government

369. The addition of less than 30 sites to the corpus of candidate sites for scheduling would not lead to any significant additional costs for the Welsh Government as it would represent a small percentage of the total of remaining sites potentially eligible under the existing criteria. Over the lifetime of the scheduling enhancement programme, the additional cost would amount to 30 x £630 (the cost of a standard scheduling action) or some £18,900 plus any travel costs. Around 10 sites, renowned for their significance, would be given priority for scheduling. They would be designated between 2016 and 2021 at an annual cost of £1,260.
370. Owners and other interested parties will have the right to request an independent review of a designation decision under other provisions of this Bill. It is estimated that 5 per cent of scheduling proposals will result in such a request which, based on the 30 sites anticipated, would mean 1 to 2 reviews at a total cost of some £3,375 based on the written representations procedure. If 10 sites are scheduled over the next 5 years, this would give a cost over this period of up to £1,125. However, given that these sites have survived without being subject to undue damage and are well known for their archaeological significance, it is probable that no reviews will be requested.

Owners

371. As outlined above it is difficult to estimate the costs for an owner of their property being scheduled given that potential sites could range from unimproved grazing land through to a complex of ruinous industrial buildings or a disused slate quarry. The study by the Royal Institute of Chartered Surveyors concluded that scheduling had a positive effect on land values and agricultural, horticultural and forestry works can continue largely unchanged. Dwellings cannot be scheduled and buildings in economic use will not be scheduled, other than where they are in use as a museum or in a similar role. The annual number of SMC applications represents about 2.4 per cent of the total number of scheduled monuments, although a large proportion of this annual number of applications relates to a small number of monuments subject to change and development, such as Cardiff Castle. Accordingly, most owners will never need to apply for SMC for monuments in their ownership.

Benefits

Option 1 — Do nothing

372. This option would bring no benefits aside from it not requiring any legislative change. However, it would not address the lack of protection of a small number of nationally important archaeological sites.

Option 2 — Revise the statutory definition of what may be scheduled to include any monument which the Welsh Ministers consider to be of national importance for its historic, architectural, traditional, artistic or archaeological interest.

373. As well as covering sites of the type proposed in option 3, it could encompass a vast range of historic sites including buildings in active use, hedgerows and extensive areas of historic interest. Policy guidance or secondary legislation would be needed to limit prospective sites to those that would be most suited to the restrictive controls imposed by the scheduling regime.

Option 3 — Extend the definition of what may be scheduled to include all sites that provide evidence of past human activity.

374. This option would slightly extend the range of sites that would satisfy the criteria set out in the 1979 Act. As a result, a relatively small number of highly significant archaeological sites could be added to the schedule of monuments protecting them for future generations.

Summary and preferred option

375. Option 1 would produce no benefits, whilst option 2 would unacceptably extend the range of sites that might be scheduled and thereafter subjected to strict controls on works carried out to them. As such, it would need to be limited by policy restrictions on what might be scheduled.

376. The Welsh Government considers that option 3 — the extension of the definition of what may be scheduled to include sites that provide evidence of past human activity — offers the best way forward. It will ensure that the scheduling programme is able to protect the most archaeologically important sites in Wales in the most open and transparent way. In the view of Cadw, only a small number of sites would become eligible for scheduling, but those represent a group of highly significant archaeological sites that should be protected from damage and loss.

Table 7 — Summary of additional costs for preferred option 3.

	Current costs	Additional costs	Comment
The Welsh Government	N/A	£18,900	One-off cost of scheduling
	N/A	£3,375	One-off cost of reviews
Total		£22,275	

Relaxation of the conditions for an application for a certificate of immunity from listing (section 27)

Options

377. Three options were considered:

- Option 1 — Do nothing and continue to require that planning permission must be obtained or applied for before an application for a COI can be made.
- Option 2 — Do the minimum by encouraging pre-application discussions with Cadw.
- Option 3 — Relax the rules so that COI applications can be made at any time.

Option 1 — Do nothing and continue to require that planning permission must be obtained or applied for before an application for a COI can be made.

378. Under this option, a COI can only be sought from the Welsh Ministers when an application for planning permission has been submitted to the LPA or planning permission has been obtained.

379. The option has the disadvantage that a property owner or developer must seek planning permission before an assurance can be obtained that a building will not be listed for a period of five years. The only advantage of maintaining the link to the planning process is that it is likely to limit the number of COI applications. Given that numbers of COI applications will probably remain low, it is considered that this option places an unnecessary burden on applicants and LPAs.

Option 2 — Do the minimum by encouraging pre-application discussions with Cadw.

380. Under this option, an owner or developer would have the right to request a discussion with Cadw as part of the statutory pre-application service proposed in the Planning (Wales) Bill in order to seek assurance that a building would not be listed. However, the discussion would not have a statutory basis and the Welsh Ministers could subsequently come to a different view. Since the Welsh Ministers are under a duty to designate any building that, in their estimation, meets the criteria for listing, this option would fail to deliver an authoritative assurance of a building's immunity from listing. On that basis, this option is not considered to be viable.

Option 3 — Relax the rules so that COI applications can be made at any time.

381. This option would allow a property owner or potential developer to seek a COI at any time, making it possible to obtain a legal guarantee that a building would not be listed before time and resources are invested in the formulation

of proposals for development or purchase. There would be no charge to the applicant for submitting an application.

Costs

Option 1 — Do nothing and continue to require that planning permission must be obtained or applied for before an application for a COI can be made.

382. There would no additional costs associated with this option. However, the need to seek planning permission before applying for a COI potentially places unnecessary costs on the applicant. Even a nominal planning application for an alteration to a residence is likely to cost about £172.³³ Research carried out in 2009 estimated that the average overall cost of a planning application for a typical householder development was £1,300 (uprated to current prices).³⁴

383. There may also be unnecessary costs for the LPA since the current planning fee only covers, on average, some 66 per cent of the costs of determination.³⁵

Option 2 — Do the minimum by encouraging pre-application discussions with Cadw.

384. Detailed analysis of this option has not been undertaken as it would bring no benefits over the current arrangements. Developers concerned that their property may meet the listing criteria are already able to submit a request for an informal opinion from Cadw, so costs in this respect would be unchanged.

385. The Planning (Wales) Bill seeks to encourage the provision of a pre-application service by LPAs. There would be additional costs for the Welsh Government if developers sought Cadw's involvement in pre-application discussions on site, even if there is no realistic prospect that the building is of listable quality. Based on attendance at an hour-long meeting, the cost for the Welsh Government would be some £20 per case, plus travel time and costs. Initial research prior to the meeting and any subsequent correspondence would equate to a further two hours of staff time or £40. The total cost would therefore average some £100 per case. Without further research, it is impossible to estimate the likely demand for such pre-application discussions. However, Cadw estimates that some 35 per cent of buildings in Wales were built before 1919, which would provide a large pool of buildings which have some historic value.

Option 3 — Relax the rules so that COI applications can be made at any time.

386. The number of COIs currently sought in Wales is low (see Table 8), reflecting the fact that the listing resurvey of Wales was completed in 2005.

³³ Planning Portal Fee Calculator

³⁴ Benchmarking the costs to applicants of submitting a planning application, Arup for the Department of Communities and Local Government, July 2009.

³⁵ Source, Welsh Local Government Association

Table 8 — Annual number of applications for COIs, 2008–2014.

COI applications	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Received	1	0	0	0	1	1
Granted	1	0	0	0	1	1

The Welsh Government

387. Similar arrangements for seeking COIs were introduced in Scotland in 2011 and in England in 2013. Both Historic Scotland and English Heritage report only a marginal increase in the numbers of certificates being sought. On this basis, Cadw does not anticipate receiving more than one additional application per annum, which can be accommodated within routine staff workloads. Cadw estimates that the staff costs for processing each application is £832 plus any travel.

Owners/developers

388. Costs for owners/developers will be unchanged in making a COI application, for which there is no charge. There is no application form, but an applicant is asked to provide details of the building's location, photographs and any background information available. This cost can be estimated at less than £50. However, there will no longer be a requirement to submit evidence of a planning application/permission, the costs for which are set out in option 1. In instances where no subsequent planning application is needed, there will, therefore, be a potential saving of between £172 and £1,300 for each COI application.

Local planning authorities

389. There will also be a small saving for LPAs since they will no longer need to determine planning applications submitted solely as a precondition for a COI. In cases where a subsequent planning application is not needed, based on the range of costs shown above, this would equate to a saving of between £58 and £403 per COI application.

Guidance

390. Information on COIs for LPAs and owners/developers is set out in draft Technical Advice Note 24: Historic Environment — part of the suite of documents prepared or updated in support of the Bill. The Cadw website will also be updated as part of routine business.

Benefits

Option 1 — Do nothing and continue to require that planning permission must be obtained or applied for before an application for a COI can be made.

391. This option brings no benefits but has the disadvantage for property owners/developers and LPAs of requiring a potentially unnecessary planning application before a certificate can be sought.

Option 2 — Do the minimum by encouraging pre-application discussions with Cadw.

392. The option provides no benefits over the current arrangements as any views on whether the building meets the listing criteria would have no legal status and it would still be liable to be listed subsequently.

Option 3 — Relax the rules so that COI applications can be made at any time.

393. This option would sever the link between applying for a COI and the need for a prior application for planning permission, offering savings to owners/developers and LPAs. With the costs and bureaucratic burden of preliminary planning applications eliminated, it will be easier for owners and developers to seek COIs, enabling them to seek new uses for unlisted historic buildings with greater confidence.

Summary and preferred option

394. Option 1 brings no additional benefits and continues to require an applicant to first meet the sometimes unnecessary cost of submitting a planning application.

395. Option 3 would remove the unnecessary burden on owners of submitting a planning application before seeking a COI. The change is expected to result in one additional application per annum and can be accommodated within Cadw’s existing workloads.

Table 9 — Summary of costs for preferred option 3.

	Current annual costs	Future annual costs/savings		Comment
		Costs	Savings	
The Welsh Government	£832	£1,664		One additional COI application annually
Owners/Developers	£222 to £1,350	£100	£172 to £1,300	Savings by dispensing with prior planning application
LPAs	£50 to £400		£50 to £400	Potential saving if no prior planning application is required

Introduction of heritage partnership agreements (sections 11 and 28)

Options

396. Three options were considered:

- Option 1 — Do nothing and continue with existing consents regimes.
- Option 2 — Do the minimum by encouraging the development of management plans within the existing consents regimes and making wider use of section 17 agreements.
- Option 3 — Introduce HPAs for a programme of permitted works within a fixed period.

Option 1 — Do nothing and continue with existing consents regimes.

397. Under this option, current LBC and SMC arrangements would remain unchanged, obliging owners undertaking programmes of repair or change on a number of historic assets to apply for multiple individual consents. For scheduled monuments, SMC must be obtained any time repairs are required. This cumbersome process can be time-consuming and expensive for both owners and consenting authorities and, since consent cannot be taken for granted, creates uncertainty for owners planning works. Moreover, piecemeal applications can sometimes obscure the wider objectives of a conservation programme and lead to disputes over specific details.

Option 2 — Do the minimum by encouraging the development of management plans within the existing consents regimes and making wider use of section 17 agreements.

398. Under this option, management plans that incorporate informal agreements about proposed future works can be agreed between owners and consenting authorities. Where this involves the negotiation of detailed, but non-binding, agreements for proposed works this can be a time-consuming process for all involved. However, formal consents would still be needed and, such management plans notwithstanding, a degree of uncertainty would remain for owners; this limits the usefulness of this approach.

399. Almost all works to scheduled monuments, even minor, annual repairs, require prior SMC. Section 17 of 1979 Act provides for the establishment of management agreements between occupiers of scheduled monuments and the Welsh Ministers. These can be used to grant SMC for works to be carried out over an agreed period and according to an agreed methodology. This overcomes the need for individual applications for each set of works, but can only provide for works of maintenance or repair and cannot grant SMC for works to change or alter the monument. Section 17 agreements also cannot apply to listed buildings.

Option 3 — Introduce HPAs for a programme of permitted works within a fixed period.

400. The introduction of HPAs will furnish a means to grant LBC and SMC, but not planning permission, for a programme of agreed works over a specified period, which is likely to be between 5 and 20 years. An HPA will be able to set out: the agreed works receiving consent, specific works that do not require consent, mechanisms for variation and modification of the agreement and

arrangements for funding and public access. While they will not be universally useful, HPAs could bring benefits in respect of:

- large or complex sites containing a variety of designated buildings or sites;
- groups of similar heritage assets in dispersed locations, such as road bridges or canal structures; and
- sites already subject to management regimes where an HPA could work in alignment with, for example, a Glastir or inheritance tax exemption agreement.

Costs

Option 1 — Do nothing and continue with existing consents regimes.

401. Continuing with the existing consents regimes will not add any additional costs or savings.

Option 2 — Do the minimum by encouraging the development of management plans within the existing consents regimes and making wider use of section 17 agreements.

Owners

402. Heritage management plans are already commonly used by the owners of large or complex estates containing designated historic assets. Such plans might vary from a simple plan agreed with Cadw (for example, one farm in the Conwy Valley has 19 important archaeological features in two scheduled fields) to a complex scheme developed for an estate owner by specialist consultants at a cost of several thousand pounds. Such plans would remain discretionary and would only be developed where the owner deems it advantageous. This option would, however, continue the current arrangements of requiring individual consent applications, preceded, perhaps, by pre-application discussions.

403. Section 17 agreements for funding the positive management of scheduled monuments over a set period, usually five years, have been used by Cadw since the 1979 Act passed into law. Currently there are some 50 extant agreements in place, a small number of which have been used as a means of granting SMC for repeat works. A further 25 section 17 agreements have been built into Glastir agreements as a means of granting SMC for straightforward works, such as ongoing erosion repairs. Given that section 17 agreements can only be used for works of repair or maintenance, agreeing appropriate methodologies for like-for-like repair would be relatively straightforward and could be incorporated into Cadw's existing work programme for the management of scheduled monuments at no additional cost.

Option 3 — Introduce HPAs for a programme of permitted works within a fixed period.

404. Since an HPA will be discretionary, an agreement will only be pursued where the owner, the consenting body or bodies and any other party involved regard

it as mutually advantageous. It is likely that there will only be a limited number of HPAs in the short term. The likely costs of the implementation of HPAs are difficult to forecast as they could be highly variable in scale, ranging from individual owners proposing to carry out modest schemes of work over a period of time to their property through to large public sector estates planning a challenging programme of works to a large number of listed buildings and scheduled monuments. It will also be necessary for training and guidance to be given to staff of the Welsh Government and LPAs.

405. A detailed assessment of eight pilot projects was undertaken in 2006 in advance of the proposed joint Wales and England Heritage Protection Bill.³⁶ The most successful of the projects involved in the study, which covered local-authority-owned bridges, milestones and wayside crosses, cost some £4,464, whilst another, covering a range of listed buildings and other historic assets at the University of East Anglia, cost £70,000 but was still considered successful. The report considered the impacts of the pilots, all in England, on the owners, the local authorities responsible for listed buildings and the national body responsible for scheduled monuments. It concluded that the number of variables involved meant that they could not specify costs or savings over the existing consents regimes in monetary terms but, as shown in Table 10, each pilot had either a neutral or positive impact. The report concluded that '...all the pilots suggested that overall there would be at worst no greater cost to a properly run system, and in many cases significant savings on doing what was (or should have been) done.' Therefore, although the initial costs of putting an HPA in place can be high, it is anticipated that, in most cases, this will be outweighed by savings for all parties to the HPA over its life.

Table 10 — Impacts of eight pilot HPAs.

Pilot	Time and Costs				Process				Overall			
	Owner	LA	EH	All	Owner	LA	EH	All	Owner	LA	EH	All
Cornwall	1	0	2	1	2	-1	2	1	1.5	-0.5	2	1
UEA	1	0	0	0.33	2	2	1	1.67	1.5	1	0.5	1
Kenilworth	1	-1	2	0.67	1	0	1	0.67	1	-0.5	1.5	0.67
Darnall	1	-1	1	0.33	1	1	1	1	1	0	1	0.33
London U'ground	0	-1	0	-0.33	1	1	1	1	0.5	0	0.5	0.33
Weid	1	-1	0	0	1	0	0	0.33	1	-0.5	0	0.17
RAF Scampton	0	-1	1	0	1	-1	0	0	0.5	-1	0.5	0
Langdale	0	-1	0	-0.33	0	1	0	0.33	0	0	0	0
Average	0.625	0.75	0.75	0.209	1.125	0.375	0.75	0.75	0.875	0.188	0.75	0.44

LA = Local authority EH = English Heritage

Time and Costs:

Savings: 2 = many; 1 = some; 0 = neutral Costs: -1 = some extra; -2 = many extra

Process:

Benefits: 2 = many; 1 = some; 0 = neutral Disbenefits: - 1 = some; -2 = many

406. The potential for the use of HPAs will be raised as part of usual business with representatives of the sector, including owners, through the Built Heritage Forum, HEG and other bodies. It is not currently the intention to produce bespoke guidance on HPAs in Wales. Cadw will, however, work closely with

³⁶ Heritage Protection Review, Historic Environment Conservation, April 2006

partners involved in developing the first HPAs and will review the need for additional guidance to strengthen existing good practice.

Benefits

Option 1 — Do nothing and continue with existing consents regimes.

407. The LBC and SMC procedures are long established and familiar to most owners of complex or multiple designated assets. These processes will also be appropriate for the vast majority of owners, who will only want to carry out works requiring consent occasionally or in respect of a single phase of significant works to restore or develop a building. However, owners of multiple designated assets carrying out extended programmes of works would have to continue to obtain multiple consents, with consequent uncertainty over the grant of individual consents. This recurring need to secure separate consents can complicate and fragment planning for long-term programmes of conservation and development.

Option 2 — Do the minimum by encouraging the development of management plans within the existing consents regimes and making wider use of section 17 agreements.

408. It is existing good practice for an owner, whether public or private, of an estate containing multiple designated historic assets to adopt a heritage management plan. This will be drawn up in consultation with LPA conservation officers, Cadw and other interested bodies. The plan aids future planning by setting out the aims and principles for the care of the estate and ensures an appropriate approach to works and change. A heritage management plan will not, however, put in place any required consents, which may be necessary to obtain some grants for future phases of works, nor will it be binding on any future consent applications.

409. Section 17 agreements can be used to grant consent for certain works to scheduled monuments and are already used by Cadw as a means of granting consent for repeat works and in Glastir management plans for approving simple repair works carried out in accordance with a prescribed methodology. Nevertheless, they can only grant SMC for works of repair and maintenance and they cannot be employed at all for listed buildings.

Option 3 — Introduce HPAs for a programme of permitted works within a fixed period.

410. Through HPAs, owners, LPAs, the Welsh Ministers and other interested parties will be able to work together to create holistic plans for the sustainable conservation and development of multiple designated historic assets. The agreements will incorporate consents, agreed and granted in advance, providing a greater degree of certainty for owners and assurance for grant-awarding bodies.

Summary and preferred option

411. Option 1 would continue the existing system, which remains appropriate for the vast majority of designated historic assets and their owners. For large and complex estates, however, it would perpetuate the need to obtain multiple and repeated consents, which can be a hindrance to long-term conservation planning. The Welsh Ministers therefore consider that this option does not provide an optimal solution.
412. Option 2 also largely continues existing practices and simply seeks to encourage good practice in terms of management planning and extend the use of section 17 agreements in conformity with current Cadw practice. It again fails to overcome the need for consent to be obtained individually for each programme of work.
413. Option 3 is the preferred option of the Welsh Ministers. Although only relevant to a relatively small number of private and public sector estates, HPAs will support a partnership approach to the sustainable management of estates containing multiple designated historic assets. Although HPAs are time-consuming and costly to establish, there is evidence that the consequent reduction in the number of applications for consent over the lifetime of the agreement will lead to savings for both the owner and the consenting body.

Introduction of temporary stop notices for listed buildings (section 29)

Options

414. Two options were considered:
- Option 1 — Do nothing and rely on existing legal powers.
 - Option 2 — Introduce powers to serve TSNs for unauthorised works to listed buildings.

Option 1 — Do nothing and rely on existing legal powers.

415. This option would continue existing arrangements in the 1990 Act which make unauthorised works to a listed building a criminal offence, but do not provide LPAs with any powers to stop such works, other than seeking an injunction or using other planning enforcement powers available to them.
416. Consultation on the draft Bill proposals clearly highlighted that the existing powers were considered inadequate and out of line with powers available to LPAs in general planning control to halt works carried out without planning permission, despite this not being a criminal offence. In Scotland, TSNs for listed buildings were introduced in 2011.

Option 2 — Introduce powers to serve TSNs for unauthorised works to listed buildings

417. The use of stop notices and TSNs in general development control enforcement work is long established and familiar to LPA staff. Although these notices are infrequently used, they are considered to be effective tools when needed.³⁷ The introduction of TSNs for listed buildings will build on these established procedures and model notices. Produced to a standard template, TSNs can be issued quickly using powers typically delegated to a chief planning officer.
418. A TSN would require an immediate cessation of unauthorised works. Unlike breaches of planning control, carrying out unauthorised works to a listed building is a criminal offence, so, in most cases, owners will cease works voluntarily. However, service of a TSN will establish clearly that the LPA considers the works to be unauthorised and provide a definite sanction if works are not halted.

Costs

Option 1 — Do nothing and rely on existing legal powers.

419. There would be no additional costs or savings arising under this option. However, there is a risk of losing more nationally important buildings due to unauthorised works as it is currently difficult, without an injunction, to put an immediate stop to those works

Option 2 — Introduce powers to serve TSNs for unauthorised works to listed buildings

420. Listed building TSNs were introduced in Scotland in 2011. Historic Scotland's view is that the notices provide enforcement officers with an additional tool that can be used alongside listed building enforcement notices and other existing powers. However, it is understood that they have primarily brought benefits as deterrents when owners/occupiers are first asked to stop work voluntarily.

Local planning authorities.

421. Based on the evidence from Scotland, it is anticipated that no more than one TSN will need to be issued annually by LPAs in Wales. Issuing a notice will be discretionary and only used as a last resort, but will cost in the region of £350 to £1,270 depending on the complexity of the case and the procedural arrangements within the council. The TSNs that are already in common usage in general development control are based on a standard model. Cadw will produce a model notice for listed buildings and will discuss their use with local authority conservation officers at the Built Heritage Forum. However, given the familiarity with their use in general planning enforcement, Cadw does not

³⁷ Arup with Fortismore Associates, 'Research into the Review of the Planning Enforcement System in Wales', May 2013

consider that any specific training is required, although this will be kept under review.

422. The main potential cost arises from the risk of compensation for losses incurred by an owner/developer where a notice is wrongly served because the works were not unauthorised or illegal. In such a circumstance the owner/developer will be compensated for any loss by the LPA. Clearly, where the TSN is served properly, the owner/developer will not be able to seek compensation because the works were unauthorised and illegal. The law regarding what works are unauthorised is relatively clear and the number of TSNs issued is likely to be very low. Provided LPAs exercise appropriate due diligence, it is anticipated that valid compensation claims should not arise.
423. It is not meaningful to attempt to establish a likely or average cost for a successful compensation claim. The works stopped could range from minor alterations to a residential property, such as the installation of a new window (which might lead to a compensation claim of no more than £100), to a more costly claim for compensation should the notice delay a major redevelopment scheme and result in lost grant aid (and this might amount to £100,000 or more).

Benefits

Option 1 — Do nothing and rely on existing legal powers.

424. This option brings no additional benefits given that it continues with existing arrangements.

Option 2 — Introduce powers to serve TSNs for unauthorised works to listed buildings

425. The addition of TSNs to the enforcement tools already available to LPAs would help to prevent ongoing damage to nationally important historic assets through illegal and unauthorised works. Although the evidence indicates that TSNs would only be issued rarely, the Scottish experience suggests that the prospect of the service of a notice, with its attendant sanctions, can be a persuasive factor in bringing individuals to agree to halt unauthorised works. The service of a notice can also save staff time when pursuing enforcement or seeking injunctions from the courts.

Summary and preferred option

426. Option 1 maintains the status quo, which is largely effective. The overwhelming majority of owners are willing to stop unauthorised works voluntarily when warned that they are committing an offence.
427. The Welsh Ministers, however, prefer option 2. It will bring listed building controls in line with the enforcement powers in general development control

by putting in place simple-to-use powers to require the cessation of unauthorised works.

Extension of the scope of urgent works and enabling the recovery of costs through a land charge (section 30)

Options

428. Four options were considered

- Option 1 — Do nothing and rely on existing statutory powers.
- Option 2 — Extend the scope of urgent works to any listed building.
- Option 3 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use, but without powers to impose a land charge.
- Option 4 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use and introduce powers to impose a land charge.

Option 1 — Do nothing and rely on existing statutory powers

429. This option would retain the existing legislative arrangements under which urgent works may be undertaken where the building is unoccupied or not in use. This limitation has been criticised as significantly restricting the instances in which the statutory power can be used. Owners can also exploit this limitation to block urgent works by bringing a property back into nominal use as a store or workshop.

430. Welsh LPAs already have a range of statutory enforcement powers that can be used, in some instances, to tackle the neglect of listed buildings; these include the service of notices under section 215 of the Town and Country Planning Act 1990 requiring works to address adverse impacts on amenity. Section 215 notices will not, however, be appropriate in many circumstances.

431. This option would also not address a key concern raised during the consultation on proposals for the Bill, namely that LPAs are reluctant to resort to urgent works because of the lack of provision for the recovery of costs incurred in executing required works if an owner fails to undertake them.

Option 2 — Extend the scope of urgent works to any listed building.

432. In the widespread consultation on the Bill's proposals, there was strong support for making all listed buildings eligible for urgent works. This would give LPAs greater flexibility when addressing the problems posed by neglected listed buildings in Wales, particularly the 9 per cent that are classed as 'at risk'.

433. Table 11 presents data from a 2011 condition survey,³⁸ which shows that, amongst the three largest categories (numerically) of listed buildings at risk, those in residential use were the least likely to be of concern.

Table 11 — Data on the three largest categories of listed buildings at risk from the 2011 listed building condition survey.

Building type	Total number of buildings	Number at risk	% at risk
Agricultural	1,473	449	30%
Domestic	12,036	448	4%
Outbuilding	1,280	306	24%

434. Even within the domestic category, the greatest problems lay where the buildings were vacant or only partly occupied.
435. Extending urgent works to all listed buildings, including residential properties, would engage the European Convention on Human Rights. It is likely to be seen as placing a disproportionate restriction on owners' property rights and, therefore, a breach of the Convention.
436. Urgent works are restricted to emergency repairs to weatherproof a building or safeguard it from collapse, vandalism or theft. As such, they should rarely involve a building inhabited as a residence. Given the potential for this option to impinge on the rights of homeowners and the limited evidence for need, the Welsh Government does not consider this to be a preferred option for addressing the problem of neglected buildings.

Option 3 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use, but without powers to impose a land charge.

437. Under this option, urgent works could be undertaken on any listed building, except where the required works would interfere unreasonably with its residential use. Urgent works would consequently be permissible on most buildings that are in such poor condition that emergency intervention is need, but they would not interfere unreasonably with the rights of homeowners.
438. However, this option would not address the difficulties faced by LPAs in recovering the costs of urgent works from owners — identified by many respondents to the consultation as a key deterrent to the wider use of urgent works.

Option 4 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use and introduce powers to impose a land charge.

439. Under this option, just as under option 3, urgent works would be allowed on any listed building, except where they would interfere unreasonably with

³⁸ Listed Building Condition Database, Cadw, 2011.

residential use. This would allow the scope of urgent works to be widened, without disproportionately restricting the rights of the homeowners.

440. This option would also allow an LPA to recover any expenses it incurred during urgent works by imposing a charge on the land on which the building stands and charging appropriate interest on that sum.
441. The Welsh Government considers that this option would go some way towards addressing the problem of the neglect of significant listed buildings with consequent damage to both the historic building stock of Wales and the quality of local amenity.

Costs

Option 1 — Do nothing and rely on existing statutory powers.

442. Maintaining the current arrangements would not introduce any additional costs. It would, however, not address the current problems faced by LPAs in recovering the costs associated with their execution of urgent works. The legislation does not currently make any provision for the recovery of costs, so LPAs must seek to recover monies by pursuing debts through court action. This can be a costly and complex enterprise, particularly where the property is in multiple or foreign ownership, ownership is transferred between companies or the owner submits successive appeals and judicial review applications.
443. The costs incurred by an LPA in carrying out urgent works can be highly variable. The works are restricted to those urgently necessary to preserve a listed building and can range from relatively modest operations to provide temporary shelter, support or security, through to complex structural repairs to a substantial building or complex of buildings. At the upper end of the scale, the repairs carried out by Denbighshire County Council to the former North Wales Hospital in Denbigh cost some £930,000. The long-term resource implications for LPAs, both in terms of cost and time, are a deterrent to the use of these powers.

Option 2 — Extend the scope of urgent works to any listed building.

444. This option would not impose any additional costs in so far as the use of urgent works would remain at the discretion of the LPA. However, extending the range of buildings to which urgent works apply could lead LPAs to employ the powers more often according to local circumstances. As outlined above, the costs associated with urgent works are difficult to quantify, since the necessary works can range from relatively minor propping or security fencing through to a highly expensive package of repair. Using the examples cited above, costs could vary from less than £10,000 to £1 million. Should an owner elect to undertake the required urgent works, the costs to an LPA will be limited to administrative expenses. These again will be variable, ranging from less than £1,000 to, perhaps, £100,000, where the owner makes repeated legal challenges to the notice.

Option 3 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use, but without powers to impose a land charge.

445. This option would raise the same cost issues as options 2 and 4, but like option 2 would not address the problem of the recovery of costs by LPAs.

Option 4 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use and introduce powers to impose a land charge.

446. As with options 2 and 3, this option would not impose any additional costs on LPAs since urgent works powers would continue to be discretionary. It would, however, extend the scope of urgent works to cover most listed buildings which are in a sufficient state of disrepair to necessitate the use of statutory powers to arrest their further deterioration. As discussed above, the costs associated with urgent works depend on the scale and duration of the work required but could range from less than £10,000 to £1 million. A further key benefit of this option is that it would empower an LPA to impose a land charge, thus ensuring the eventual recovery of its costs plus any interest from the property owner. The extended scope of the powers coupled with the greater assurance that costs could be recovered might encourage LPAs to undertake urgent works more often.

447. In order to comply with human rights legislation it is considered that options 2, 3 and 4 require a right of further appeal to a county court following the Welsh Ministers' determination of an initial appeal against the costs recoverable for the urgent works. Appeals to the Welsh Ministers are infrequent and are estimated by the Planning Inspectorate to average one every three to four years. It is likely that the use of the further appeal to the county court would be still less common and equate to a maximum of one every five years. Based on the average court costs cited in paragraph 305 above this would mean an additional cost of £1,522 over a five-year period that would fall on the justice system.

Benefits

Option 1 — Do nothing and rely on existing statutory powers.

448. This option would not provide any additional benefits. The existing provisions significantly limit the application of urgent works and provide no statutory means for the recovery of costs incurred by an LPA in carrying out any required works. The Welsh Ministers do not consider that this provides a sustainable option for the prevention of the neglect of important listed buildings in Wales.

Option 2 — Extend the scope of urgent works to any listed building.

449. This option would provide LPAs with the greatest flexibility by allowing the execution of urgent works on any listed building where they are warranted. However, the application of the statutory powers to residential properties

could breach the European Convention on Human Rights leaving the legislation open to legal challenge. In practice, moreover, the scope for the application of urgent works would not be significantly wider than under options 3 or 4, since most buildings that have become so derelict as to be candidates for urgent works are unlikely to be capable of full residential use.

Option 3 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use, but without powers to impose a land charge.

450. This option would broaden the scope of urgent works to include most circumstances in which an LPA would consider them necessary to deal with serious neglect. However, this option would not address the disincentive to the use of urgent works presented by the lack of statutory provision for the recovery of costs. The Welsh Government accordingly does not regard this as an adequate solution.

Option 4 — Extend the scope of urgent works to listed buildings where the works would not interfere unreasonably with residential use and introduce powers to impose a land charge.

451. The extension of urgent works to all listed buildings where the works would not interfere unreasonably with residential use would give LPAs greater flexibility in the exercise of the statutory powers. This option would also put in place a statutory mechanism for LPAs to recover their costs. The new powers to impose a land charge would provide effective financial assurance for LPAs seeking to address threats to listed buildings in their areas.

Summary and preferred option

452. The Welsh Government does not consider that maintaining the status quo in the form of option 1 would deliver its policy objective of protecting the listed buildings of Wales from neglect. As well as significantly limiting the applicability of urgent works to listed buildings that are unoccupied or not in use, it also does not provide any secure means for LPAs to recover costs incurred in carrying out essential works. The latter point also means that options 2 and 3 should be discounted, with option 2 also being considered likely to breach the European Convention on Human Rights.

453. Option 4 is the Welsh Ministers' preferred option. It would significantly extend the range of neglected listed buildings eligible for urgent works and would overcome concerns that owners can thwart the efforts of LPAs to use this power by bringing buildings back into partial reuse. The consultation on proposals for the Bill also gave clear expression to the widely held view that the main deterrent to the greater use of urgent works is the risk that LPAs will be unable to recover the potentially high costs of carrying out works from owners, or that recovery will be expensive and prolonged. The powers to impose a charge on the land and charge interest will bring urgent works in line with similar enforcement powers in development control and provide LPAs with greater long-term assurance that they will not be exposed to unrecoverable costs.

Requirement for local planning authorities to create and maintain historic environment records (sections 33–36)

Options

454. Three options were considered:

- Option 1 — Do nothing — and continue existing arrangements.
- Option 2 — Publish non-statutory guidance on the adoption and management of HERs by LPAs.
- Option 3 — Place a duty on LPAs to create and keep up to date HERs.

Option 1 — Do nothing and continue existing arrangements.

455. The HERs underpin the heritage management and development control advice provided to LPAs and a wide range of other organisations and individuals.

456. The HERs were established by the four WATs in the 1970s. On a number of occasions one or more of the trusts have run into financial difficulties that have threatened their survival and, by extension, their HERs. In an attempt to safeguard the HERs in the future, their ownership was passed to separate HER charitable trusts in 2008, but they continue to be managed and maintained by the WATs.

457. There nevertheless remains a residual concern, especially in the face of future funding challenges, that HERs would be vulnerable if their parent WATs should fail. Without HERs to furnish information and advice essential for the proper assessment of the impact of development proposals on the historic environment, LPAs would be unable to carry out effectively their planning and other responsibilities towards the historic environment.

Option 2 — Publish non-statutory guidance on the adoption and management of HERs by LPAs.

458. Under this option, the Welsh Government would issue non-statutory guidance to LPAs and the WATs on the management of HERs. The guidance would encourage LPAs to adopt HERs for the purpose of obtaining planning advice relating to archaeology and other management purposes. It would also encourage the WATs to maintain the HERs to certain benchmarks and standards.

Option 3 — Place a duty on LPAs to create and keep up to date HERs.

459. This option would make LPAs responsible for HERs and their functions, including the storage and maintenance of information about the local historic environment and the provision of public access to that information. An LPA would be able to make arrangements for the discharge of this duty through another body. The expectation is that LPAs would be likely to meet this obligation by maintaining the current arrangements with the WATs. There would be a requirement for the archaeological trusts to meet specified benchmarks in order to provide the service.

Costs

Option 1 — Do nothing and continue existing arrangements.

460. The HERs have been compiled and collected over a long period of time by a variety of means. The Welsh Government provides the main funding for the HERs in the form of an annual grant of £120,000 to the WATs for their maintenance and management. Cadw gives the trusts an additional sum of around £30,000 per year to support a public enquiries service. The LPAs occasionally commission small projects or provide small grants for the enhancement of HERs in their areas. However, the present grant funding falls short of that required to support a full-time officer in each WAT dedicated to the upkeep, maintenance and management of the HER.
461. The WATS can raise some additional revenue through charging fees for commercial access to the HERs. These charges are intended to cover officer costs, materials and services, such as photocopying. The current fee for commercial enquiries is £25 per hour.
462. The importance of the HERs is not always adequately recognised by LPAs. Without this source of information and the advice that is provided alongside the information, then there is a risk that development proposals may be assessed inadequately and have a negative impact on the historic environment.
463. In England, the majority of LPAs own and manage their own HERs. However, in the absence of any statutory role or status for HERs, many are vulnerable to local authority cuts. In some areas, the HER has become a static resource that fails to furnish adequate archaeological support or interpretation in the planning process.

Option 2 — Publish non-statutory guidance on the adoption and management of HERs by LPAs.

464. Those costs identified in option 1 would remain. The Welsh Government would prepare the guidance and undertake the necessary consultation on it. This would occupy a member of staff at HEO grade for one month at a cost of less than £4,000.
465. The guidance would encourage each LPA to adopt an HER as the source of advice on the historic environment — currently formal recognition is patchy. There would, therefore, be a requirement for the LPAs to enter into service level agreements with the relevant WATs over the provision of archaeological and heritage management advice. Some LPAs already have such agreements in place, and these could be used as templates for other areas.
466. It is estimated that it would cost approximately £1,000 to establish a service level agreement (based on 2 days of WAT and LPA officer time to develop and negotiate the agreement) and £500 per year to sustain it (based on 2 half-day review meetings annually). To introduce such agreements across the 25 Welsh LPAs, therefore, there would be a one-off cost of £25,000 in 2016–2017 and an annual cost of £12,500.

467. This option might promote the status of the HERs within LPAs, but there would be no requirement on the authorities to adopt and follow the guidance.

Option 3 — Place a duty on LPAs to create and keep up to date HERs.

The Welsh Government

468. Under this option, each HER would be required to employ one full-time officer at an appropriate grade (at a salary of £50,000 plus costs) — generally regarded as the minimum level of staffing needed for an effective HER.³⁹ Since the WATs already employ staff to maintain and manage the HERs, it is estimated that this would cost an additional £80,000 per annum across the four trusts. The Welsh Government would accordingly need to increase its annual HER grant to the WATs by that amount.
469. Guidance to accompany this new duty would be required at a one-off cost to the Welsh Government of less than £4,000 (estimated on the same basis as option 2).

Local planning authorities

470. Under this option the LPAs (or anybody acting on their behalf) would be able to charge a fee for providing copies, advice or assistance for HER enquiries. Welsh Government funding would cover the cost of public enquiries, and therefore only commercial inquiries would be charged. The charge cannot be profit making, and therefore the current rate of £25 per hour would continue to apply.
471. It is anticipated that the LPAs would meet with the WATs regularly to monitor performance. Based on the assumption that a representative from each LPA would meet with the relevant HER officer for half a day twice a year — representing a total of 8 hours per year for 29 people (representing the 25 LPAs and 4 WATs) — the estimated annual cost to the LPAs would be £6,000 per annum.

Benefits

Option 1 — Do nothing and continue existing arrangements.

472. The current structure for the HERs is well understood and widely recognised as being very successful and cost effective. The four HERs provide comprehensive coverage of the whole of Wales.

Option 2 — Publish non-statutory guidance on the adoption and management of HERS by LPAs.

473. More formal links between the HERs' expert archaeological advisers and local authority conservation services might provide more integrated

³⁹ See the recommendations on staffing in the published HER guidance from the Association of Local Government Archaeological Officers.

provision for matters pertaining to the built historic environment and archaeology.

Option 3 — Place a duty on LPAs to create and keep up to date HERs.

474. The HERs are an essential source of information for managing, caring for and understanding the historic environment. Access to consistent, up-to-date and high-quality information about the historic environment from the HERs is an important requirement for the delivery of planning and development control as well as for public benefit and educational use. Collectively the HERs act as a unique repository, signposting over two hundred thousand years of human activity, and providing a resource for conservation, regeneration and local history.
475. Professional planning advice and a well-maintained HER are critical for local economic growth and development. They allow commercial firms to meet statutory requirements more promptly and specialists to provide an early indication of the impact on heritage assets. They also help to prevent wasted applications and minimise unplanned costs and delays to development.
476. Placing HERs on a statutory footing will ensure that they are better resourced, more effectively managed and better able to provide sound advice and evidence for decisions affecting the Welsh historic environment. This will result in more coherent and consistent management of the historic environment with attendant public benefits in the long term.

Summary and preferred option

477. The Welsh Government's preferred option is option 3. Only by placing the HERs on a statutory basis will their futures be secured. Without this duty, the HERs could become obsolete, which would have a detrimental impact on our understanding of the historic environment as well as leading to a decline in specialists providing professional advice. Since the Welsh Government currently gives grants to the WATs to maintain the HERs, there will be minimal additional cost from placing the HERs on a statutory basis.

Table 12 — Summary of costs for preferred option 3.

The Welsh Government

	2016/17	2017/18	2018/19	2019/20	2020/21
Additional grant	£80,000	£80,800	£80,800	£80,800	£80,800
Guidance	£4,000	—	—	—	—
Total	£84,000	£80,800	£80,800	£80,800	£80,800

LPAs

	2016/17	2017/18	2018/19	2019/20	2020/21
Performance monitoring	£6,000	£6,000	£6,000	£6,000	£6,000

Establishment of an advisory panel for the Welsh historic environment (sections 37–38)

Options

478. Three options were considered:

- Option 1 — Do nothing.
- Option 2 — Establish an advisory panel on a non-statutory basis.
- Option 3 — Establish an advisory panel on a statutory basis.

Option 1 — Do nothing.

479. In 2010, the Ancient Monuments Advisory Board and the Historic Buildings Advisory Council were discontinued. These bodies had provided specialist advice to the Welsh Government and its predecessors on statutory ancient monument issues and grant allocations to historic buildings respectively. Neither body aimed to provide strategic advice on broader historic environment policy. Since that time there has been no body with appointed members to provide independent expert advice to the Welsh Ministers on historic environment policy and strategy and the delivery of public historic environment services at a national level in Wales.

480. The non-statutory HEG was established in 2004 and comprises nominated representatives of organisations from across the historic environment sector in Wales. It acts as a forum for stakeholder communication and coordinated action.

Option 2 — Establish an advisory panel on a non-statutory basis.

481. Under this option, a new advisory panel would be established to provide independent advice across a broad range of policy development activities, as well as specific expert advice relating to the wider historic environment and the management of properties in the care of the Welsh Government. Such a body would be flexible and the Welsh Government would easily be able to amend its functions and constitution to ensure that it effectively delivers the advice needed.

482. A non-statutory panel may, however, only enjoy a limited status in the eyes of the historic environment sector. There would also be the key risk that it could be abolished, or its purpose changed, without a need to consult the wider sector.

Option 3 — Establish an advisory panel on a statutory basis.

483. This option would have the same benefits as option 2 in terms of creating a panel to provide independent advice. Its statutory nature would reflect the high value attached to its role by the Welsh Government and the recognition of the need for long-term integrated policy development and planning. Establishing the panel by statute would also endorse its independence and safeguard its future with abolition only possible after appropriate, transparent debate and consultation.

Costs

Option 1 — Do nothing.

484. This option would not lead to any additional costs. There are four HEG meetings a year with costs in the region of £5,000 per annum to cover travel, subsistence and room hire/catering. Generally, organisations represented on HEG take turns in hosting the meetings, and therefore, in the majority of instances, the Welsh Government covers the catering costs only. Representatives give up their time freely to contribute to the meetings. The HEG secretariat takes up to 25 per cent of the time of an officer at HEO grade at a cost of £13,000 per annum.

Option 2 — Establish an advisory panel on a non-statutory basis.

485. The cost of establishing a non-statutory advisory panel would fall to the Welsh Government. It is expected that the maximum recruitment cost under this option would be £11,000, which would cover the advertisement of the positions, the establishment of a selection panel, the provision of administrative support throughout the process and the payment of candidates' expenses. The recruitment costs would be incurred in 2016–2017. The annual cost to cover remuneration and other expenses would be in the region of £50,000. Fourteen panel members would be paid £145 per day for a maximum of 10 days, with the chair receiving a slightly higher rate (£190 per day) for a maximum of 15 days. It is anticipated that the secretariat would require up to 50 per cent of the time of an individual at HEO grade or equivalent at a cost of £26,000 per year. The panel would not be responsible for budget or staff.

Option 3 — Establish an advisory panel on a statutory basis.

486. The costs associated with establishing an advisory panel on a statutory basis would fall to the Welsh Government and would be the same as for option 2.

Benefits

Option 1 — Do nothing.

487. The historic environment sector understands the current arrangements for sharing good practice. Every year, HEG meets four times and the Welsh Government Minister responsible for the historic environment attends to chair two of those meetings. Cadw chairs the meetings in the Minister's absence and also provides the secretariat. The forum enables HEG members to hear about the Welsh Government's priorities and latest thinking and provides them with opportunities to comment and offer input on matters such as the Historic Environment (Wales) Bill, the Historic Environment Strategy (and its action plan) and future funding for the historic environment third sector. The forum provides opportunities for the Minister to speak directly to the sector which helps to ensure clear messaging.

488. The organisations represented on HEG value the outcomes that have been delivered, especially through the subgroups; an example is the report, ‘A strategic approach for assessing the potential impact of climate change on the historic environment of Wales’, issued in December 2012. The Archaeological Archives subgroup has undertaken a review of the storage and use of archaeological archives in Wales in light of pressing problems in terms of access and space. However, members of HEG are there to represent their own organisations and so it cannot meet the policy objective of the provision of independent, expert advice on historic environment policy and strategy.

Option 2 — Establish an advisory panel on a non-statutory basis.

489. The panel could provide advice to the Welsh Ministers and other historic environment services on the development of strategy and policy. The Welsh Government would have the flexibility to decide on recruitment, size, logistics and the agenda of the panel.

Option 3 — Establish an advisory panel on a statutory basis.

490. There was widespread support for a statutory panel from stakeholders who responded to the consultation on proposals for the historic environment. Many stakeholders made a case for a panel that could provide independent expert advice for the development of the Welsh Government’s historic environment policy. The panel would also be able to furnish such advice to inform the development of the proposed strategic plans for the sector and to report on the delivery of those plans. Furthermore, the panel could offer independent expert advice, guidance and, where appropriate, challenge for those who deliver public historic environment services at a national level in Wales. By making the panel part of the Bill, it would be future-proofed, requiring any future proposal to abolish or significantly alter the nature of the panel to be subject to appropriate debate and consultation.
491. A similar body was in place in Scotland until 2009 — the Historic Environment Advisory Council for Scotland. In its final report,⁴⁰ the council outlined its achievements and highlighted its ability to influence future thinking on a number of important issues. Although its recommendations were not always accepted by Ministers in Scotland, the council provided the sector with an evidence base on which decisions could be based. Within the document, the chair of the council made a notional calculation of the value of the advice provided by body. The calculation was based on an estimate of the average time spent by members on the council’s work over six years, multiplied by a conservative estimate of the daily rate which any of the members could command as consultants; the total sum was over £1 million.

Summary and preferred option

492. Option 1 continues the status quo and is not considered the optimum option. There are currently no independent advisors to the Welsh Government following

⁴⁰ Historic Environment Advisory Council for Scotland, *Annual Report 2008/2009*.

the abolition of the Ancient Monuments Advisory Board and the Historic Buildings Advisory Council in 2009. Both bodies only provided specialist advice on subjects within their relatively narrow remits. A broader policy perspective is provided by HEG, but this non-statutory group is not independent or transparent, with members representing invited organisations within the sector.

493. Options 2 and 3 would provide transparently recruited panels representing a broad range of expertise across the historic environment sector. The Welsh Ministers, however, consider that option 3 is to be preferred since statutory status would future-proof the panel, ensuring that any future proposal to abolish or significantly alter the nature of the panel would be subject to appropriate debate and consultation.

Table 13 — Summary of costs for preferred option 3.

	Current costs	Future costs	Comment
The Welsh Government	£18,000 per annum	£18,000 per annum	Annual cost for HEG secretariat
	N/A	£50,000 per annum	Annual cost for the panel
	N/A	£11,000	One-off cost for appointment to the panel

Annual costs and savings

494. Overall the RIA finds that the costs associated with the Bill's provisions are modest, fall primarily on the Welsh Government, and can be met within current resource allocations.
495. A complicating factor is that some of the provisions are enabling, but the associated costs can either only be expressed in terms of a potential range (for example, carrying out urgent works), or cannot be realistically predicted in terms of when they are likely to be incurred (for instance, compensation costs which may be incurred immediately or not at all).

The Welsh Government

496. The majority of the costs arise from the three provisions relating to placing the *Register of Historic Parks and Gardens* on a statutory basis, placing the HERs on a statutory basis and establishing the advisory panel. The predicted costs, including one-off costs, are shown in Table 14.

Local planning authorities

497. The new costs to be imposed on LPAs by the Bill are very limited. The chief new cost will be additional costs relating to the formal monitoring of the HERs at some £6,000 per year. The other costs are effectively restricted to the cost of the local administration of constraints mapping for interim protection, which is expected to be less than £1,000 per year across the Welsh LPAs, and the

costs arising from the new powers to serve listed building TSNs, which are likely to amount to some £1,000 annually. Costs relating to the extended powers to carry out urgent works and impose land charges cannot be predicted meaningfully in terms of either monetary sums or timing.

Owners/developers

498. The Bill's proposals will have few cost implications for owners or developers. Certificates of immunity have the potential for average annual savings of up to £1,237 where an unnecessary planning application is avoided. The designation review provisions will provide a new, cost-effective mechanism to challenge designation decisions, but, if pursued, will nevertheless lead to costs per case of between £50 and £2,000 depending on the complexity of the case.

Table 14 — Summary of predicted costs for the Welsh Government.

	2016/17	2017/18	2018/19	2019/20	2020/21
Interim protection mapping	£1,000	£1,000	£1,000	£1,000	£1,000
Designation reviews	£6,750	£6,750	£6,750	£6,750	£6,750
Simplified SMC procedure	-£524	-£524	-£524	-£524	-£524
Retrospective SMC	£172	£172	£172	£172	£172
SMC guidance	£200	—	—	—	—
Scheduled monument TSNs	£350	£350	£350	£350	£350
Scheduled monument enforcement notices	£875*	£875*	£875*	£875*	£875*
Amendments to offences and defences — guidance	£500	—	—	—	—
Statutory register of historic parks and gardens	£26,200	£22,200	—	—	—
Historic parks and gardens — guidance	£5,000	—	—	—	—
Extension of scheduling definition	£2,070	£2,070	£2,070	£2,070	£2,070
COIs	£832	£832	£832	£832	£832
Statutory HERs	£80,000	£80,000	£80,000	£80,000	£80,000
HER guidance	£4,000	—	—	—	—
Statutory advisory panel — support costs	£50,000	£50,000	£50,000	£50,000	£50,000
Statutory advisory panel — recruitment	£11,000	—	—	—	—
TOTAL	£188,425	£163,725	£141,525	£141,525	£141,525

*The cost shown is the median cost in a range of potential costs.

Section 8: Competition and other impact assessments

Competition assessment

499. A competition filter test has been completed for the legislation and is presented below.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

500. A detailed consideration of the very limited impact of the provisions of the Historic Environment (Wales) Bill on competition follows.

Consultation and review of decisions to designate historic buildings and ancient monuments

501. There will be no competition impacts. The provisions will simply add transparency and openness to existing designation procedures by providing for consultation with owners and others prior to designation and putting in place a procedure for owners to request a review of any decision to designate.

Reform of the scheduled monument consent process

502. The amendments to the SMC process, which authorises works to scheduled monuments, are largely technical and aim to streamline and simplify the procedures involved. As such, they will affect all applicants equally and will have no impact on competition.

Enforcement against unauthorised works affecting scheduled monuments and listed buildings and changes to the offences and defences in the 1979 Act

503. The enforcement provisions are intended to ensure that prompt and effective action can be taken against those who have carried out, or are in the process of carrying out, unauthorised — and therefore illegal — works to designated historic assets. The provisions would not affect competition between businesses legally carrying out works to historic assets.
504. The changes to the offences and defences in the 1979 Act aim to ensure greater success in the prosecution of those who have damaged or carried out unauthorised works to scheduled monuments and will not affect anyone acting legally.

Statutory duty on the Welsh Ministers to compile and maintain a register of historic parks and gardens

505. The provisions will place the current non-statutory register, on which the parks and gardens have only been included with the agreement of the owner, on a statutory basis. Given that inclusion on the register is a material consideration in national planning policy, the provisions have the potential to affect the owners of sites not currently on the register if they should seek to change or develop their property in a way that requires planning permission. However, relatively few owners will be affected — only 14 complete and 7 partial sites have been excluded from the current register of 386 historic parks and gardens — and many of those may not seek to develop their property or will do so in a way that will not damage its character. As such, it is not considered that the provisions will have a material impact on competition.

Extend the definition of what sites may be scheduled

506. The extension of the definition of the type of historic site that can be designated as a scheduled monument will impact on the owners of the land or sites in question. However, it is estimated that less than 30 such sites will be added to the Schedule, which currently includes over 4,000 sites. Scheduling will not usually be used to designate buildings in economic use and does not prevent the continuation of existing land uses. As outlined in the RIA, research has shown that scheduling generally has a positive impact on land values, and that it can attract additional funding in agri-environmental schemes giving a farming business a potential financial advantage over competitors.⁴¹ However, the presence of a scheduled monument is only one of a number of elements considered in the calculation of grant funding. Given this and the fact that the number of sites likely to be added to the Schedule will represent only a marginal increase in the total number of monuments, many of which are on farms, it is not considered that the impact on competitiveness is material.

⁴¹ See pp. 78–80.

Certificates of immunity from listing

507. The provisions would allow COI applications to be made at any time, not just when planning permission has been applied for or already obtained. The change will benefit owners and developers, but it will be common to all parties and not affect competitiveness.

Heritage partnership agreements

508. The introduction of HPAs will allow SMCs and LBCs to be granted for long-term programmes of works to designated sites, eliminating the need to seek individual consents for specified works. Provided the relevant consenting bodies agree to this approach, the agreements will be available to all owners and not impact on competition.

Urgent works

509. The extension of urgent works to all listed buildings, provided those works do not interfere with residential use, has the potential to affect all owners who neglect the maintenance or repair of their property and will not, therefore, impact on competition.

Historic environment records

510. Placing a duty on LPAs to create and maintain HERs will ensure that the information in the records continues to be available to all and will have no impact on competitiveness.

Establishment of an advisory panel for the Welsh historic environment

511. The role of the panel will be to provide independent advice to the Welsh Ministers across a broad range of policy development and areas requiring expert advice. It will have no impact on competitiveness.

Specific impact assessments

512. Specific assessments of the impact of the Historic Environment (Wales) Bill on a variety of policy areas have been completed in conjunction with the RIA.

Equality impact assessment

513. Under the public sector equality duty, the Welsh Government must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. The equality impact assessment (EIA) is the Welsh Government's formal and systematic mechanism to evidence that due regard.

514. By improving the protection and sustainable management of the Welsh historic environment, the Historic Environment (Wales) Bill will ensure that it continues to bring economic, social and environmental benefits to all of the people of Wales now and in the future. Any differential impacts that the Bill will have on groups with protected characteristics will be negligible.
515. The Advisory Panel for the Welsh Historic Environment will act as a voice for access and inclusion in the strategic and policy advice that it provides to the Welsh Ministers. Positive efforts will be made to recruit people with protected characteristics to the panel in line with the Welsh Government's policy.
516. The provisions of the Historic Environment (Wales) Bill have been framed to be compliant with the Human Rights Act and have been thoroughly analysed to confirm their compliance.
517. In light of the negligible impact of the Historic Environment (Wales) Bill on groups with protected characteristics, the Equality, Diversity and Inclusion Division have confirmed that it is unnecessary to proceed to Stage 2 of the EIA.

The United Nations Convention on the Rights of the Child

518. The Rights of Children and Young Persons (Wales) Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy.
519. During the development of the Historic Environment (Wales) Bill, consultation events for sixth-form Welsh Baccalaureate students were organised in north and south Wales. A total of 187 pupils from eight schools took part in the events. The sessions introduced the young people to some of the issues central to the protection and sustainable management of the historic environment and gathered their views on its importance and the priority that should be given to safeguarding it.
520. The consultation events showed that many young people regard the historic environment as an important part of Welsh communities and support its sustainable management so it can continue to deliver meaningful social, economic and environmental benefits to the people of Wales. The Historic Environment (Wales) Bill will benefit all of the people of Wales, but it will also have some particular positive outcomes for children, young people and their families across Wales.
521. By placing the HERs on a more stable footing, for instance, the Bill will help to support and further their educational and outreach activities, which include the development of educational resources to assist schools in educating children and young people about the importance of the historic environment and the local history of their areas. The online, map-based resource being developed alongside the Bill to provide information on all designated and registered historic assets will also help to make information on the historic environment more widely available to everyone, including young people.

522. The results of the consultation events not only informed the development of the Bill, but also helped to shape the Welsh Government's approach to further engagement with young people to improve their understanding and knowledge of the historic environment. This can be demonstrated through the work being undertaken to support the new Welsh Baccalaureate and the National Curriculum more generally. It is also evident in the project that Cadw is developing under the community archaeology framework in partnership with other key stakeholders and with the financial support of the Heritage Lottery Fund. The project, entitled 'Unloved Heritage', will see young people between 18 and 25 investigate different themes of Wales' unique past while developing specialist skills in archaeology

Impact on the Welsh language

523. The Bill is technical in nature and will not have a direct impact on the Welsh language. In preparing the Welsh language impact assessment, a number of indirect positive and negative impacts were identified, as well as a missed opportunity to promote the language further.
524. The historic environment contributes to local distinctiveness and generates a powerful sense of place that inspires community pride and confidence and gives people a sense of belonging that fosters well-being. The historic environment of an area is fundamental to sustaining traditions, including the use of the Welsh language.
525. The Advisory Panel on the Welsh Historic Environment could have a positive impact on the Welsh language. The panel will advise Welsh Ministers on historic environment policy and the development and delivery of strategic programmes of work. This could include advice on the importance of the historic environment to the Welsh language.
526. The Welsh language will be promoted through the numerous notices and communications that will be required under the Bill's provisions. All notices will be displayed bilingually, and any correspondence with owners and occupiers will be in their preferred language.
527. The Bill will introduce a duty on every LPA to create and maintain an HER, but will allow an LPA to discharge that duty through another person or body, such as one of the WATs currently responsible for the HERs. The HERs are not bilingual resources, and, due to the number of records contained within the HERs (over 150,000 primary records), it would be costly to make all records available bilingually. The Trusts do offer accompanying services, such as interpretation of the records and planning advice, bilingually and all have a Welsh language policy.
528. During the consultation on the Bill, some people called for legislation to place a duty on LPAs to keep a list of Welsh language place names and to accord them some form of protection. However, the focus of the Historic Environment (Wales) Bill is on the protection and sustainable management of the physical traces of past human activity in the historic environment — including

archaeological sites, monuments and historic buildings. The protection of place names falls outside the scope of the Bill.

529. Nevertheless, the Welsh Government recognises the value of place names as key sources of evidence for informing the identification and management of historic assets. The Welsh HERs already collect such evidence and make it publicly available. Local authorities, in turn, draw upon the material in the HERs when considering planning decisions affecting the historic environment. By placing the HERs on a more stable footing, the Bill will enable them to continue to gather place name evidence and integrate it with other information about the historic environment.

Sustainable development

530. The central organisational principle of the Welsh Government is sustainable development.

‘Sustainable development means enhancing the economic, social and environmental well-being of people and communities [and] achieving a better quality of life for our own and future generations in ways which promote social justice and equality of opportunity and enhance the natural and cultural environment and respect its limits.’⁴²

531. The Historic Environment (Wales) Bill will do much to promote this principle by enhancing existing mechanisms for the sustainable management of the historic environment.
532. The Bill’s provisions for HPAs and HERs will have a positive impact on the sustainable management of historic assets. The HPA provisions have been framed to improve the sustainable management of Wales’ designated historic assets through voluntary agreements between consenting authorities, owners and other interested parties working in partnership. The agreements will require the development of management plans that will support integrated and coherent programmes of work over periods of years. This will not only benefit the assets, but also bring savings to the parties involved.
533. The Welsh HERs store and provide access to systematically organised information about the wider historic environment and specific historic assets in a given area. By placing a requirement on LPAs to create and maintain HERs, the Bill will ensure that this authoritative information is recorded and stored in an effective way and is publicly available at a local level with appropriate professional interpretation and assistance for reference, research and educational purposes. The HERs will also serve as critical sources of advice and evidence upon which LPAs and other land managers can base decisions that may have an impact on the historic environment of their area.

⁴² *A Sustainable Wales: Better Choices for a Better Future — Consultation on proposals for a Sustainable Development Bill* (Welsh Government, 2012), p. 2

534. In conjunction with the Historic Environment (Wales) Bill, policy, advice and guidance documents are being prepared to enhance existing mechanisms for the sustainable management of the historic environment. At the heart of the sustainable management of change are systems of consents that ensure that the special values of historic assets are carefully considered and protected or enhanced so that those assets can continue to bring social and economic benefits. The planning system has a central role to play in conserving the unique historic environment of Wales and in managing it sustainably. The revised historic environment chapter for *Planning Policy Wales* and the new technical advice note for the historic environment — both of which have been drafted to complement the Bill and will be the subject of public consultation in late 2015/early 2016 — embed the principles of the sustainable management of the historic environment into the planning system.

Rural proofing

535. The Historic Environment (Wales) Bill will impact both urban and rural areas.
536. Rural areas include countless traditional buildings and historic features and the great majority of Wales' archaeological sites. Conservation of our historic environment is increasingly recognised as an integral part of the drive towards a more sustainable farming industry.
537. The Bill and its associated policy, advice and guidance aim to enhance existing mechanisms for the sustainable management of the historic environment and to give more effective protection to listed buildings and scheduled monuments. These provisions should have a positive impact on rural areas.
538. Access to information will be important for the effective implementation of the Bill. A new online, map-based database is being developed that will provide information on all listed buildings, scheduled monuments and registered historic parks and gardens in Wales. This will give landowners and the general public a clear, easily available and free means to obtain authoritative descriptions and maps.
539. With the right information, land managers can play a vital role in ensuring that our historic sites are passed down to future generations. The HERs will provide sources of information on the historic environment and important starting points for management processes, conservation, fieldwork and research, and public engagement and outreach relating to the historic environment.
540. Extending the definition of a scheduled monument will result in an increase in the number of monuments eligible for scheduling. Land management activities may be restricted when a monument is scheduled. However, provisions exist for automatic consents for the continuation of any agricultural, horticultural or forestry works of the same kind as had been lawfully carried out at the monument during the preceding six years.

Health and well-being

541. The Historic Environment (Wales) Bill will not impact directly on health and well-being, but there will be indirect impacts arising from improvements in the protection and sustainable management of the historic environment and the introduction of greater transparency and accountability in decision-making processes.
542. Specific research was carried out in England in 2014 into the impact of heritage on well-being.⁴³ The research found that visiting heritage sites such as historic towns, buildings, industrial sites and archaeological sites had a significant positive relationship with life satisfaction. Overall, the study concluded that impact of such visits on life satisfaction was slightly higher than the impact of participating in sport or the arts and could be monetised as having an annual value per person equivalent to £1,646.
543. Surveys have shown that some 73% of adults visited a heritage site in the previous 12 months which, as well as benefiting life satisfaction, can also support active lifestyles by providing an environment to explore or a focus for walks and other activities.
544. Placing the *Register of Historic Parks and Gardens* on a statutory basis will ensure that it is comprehensive and up to date. Many of the sites on the register are public parks and gardens and the provision will ensure that these continue to be protected through the planning process as community amenities.
545. Placing the HERs on a statutory basis will ensure their sustainable future as central providers of information on historic assets and historical information about an area, thereby making a positive contribution to community's sense of place and supporting its identity and cohesion.

Impact on privacy

546. The Privacy Impact Assessment Screening Tool was applied to each provision of the Bill in order to identify whether there would be any impact on privacy that would require a full assessment. The screening confirmed that no substantive new impacts on privacy would arise directly from the Bill. It was therefore agreed with the Welsh Government's Information Rights Unit that the Bill did not require a full Privacy Impact Assessment.

Impact on the voluntary sector

547. There are over 700 voluntary organisations in Wales with an interest in history or the historic environment. Many receive funding from the Welsh

⁴³ Daniel Fujiwara, Thomas Cornwall and Paul Dolan, 'Heritage and Wellbeing' (English Heritage, 2014).

Government to support important specialist roles in caring for and promoting aspects of the historic environment and in providing expert advice.

548. The Historic Environment (Wales) Bill will have the greatest impact on a small number of third sector organisations, such as the National Trust and some wildlife trusts, with significant landholdings containing designated historic assets. As owners of multiple designated assets, such organisations could gain significant benefits from the introduction of HPAs, which would enable the negotiation of agreed management plans with consenting authorities and eliminate the need for repeated individual consent applications. The modernisation of the scheduled monument consent process might also bring those organisations efficiency savings.
549. The extension of the definition of a scheduled monument has the potential to extend scheduling to sites in third sector ownership that currently cannot be designated. The numbers will, however, be small and, as most organisations that are likely to be affected are already working in the field of conservation in some capacity, it is not anticipated that the new designations would be onerous or opposed. Similarly, placing the *Register of Historic Parks and Gardens* on a statutory basis will increase the number of registered sites. However, it is understood that all third sector organisations that own registered parks and gardens have already voluntarily agreed to the inclusion of their sites on the register.
550. The Advisory Panel for the Welsh Historic Environment will be made up of members appointed for their expertise in key aspects of the Welsh historic environment rather than as representatives of particular organisations. Given the importance of the third sector to the historic environment, members with experience of the work of the sector will have an opportunity to provide expert advice on the needs of the sector and to inform the development of policies for the historic environment.

Justice impacts

551. As analysed in detail in chapter 7 of the RIA, the Bill will introduce three new criminal offences and amend three existing criminal offences/defences:
- a new offence in the 1979 Act of failing to comply with a TSN in respect of unauthorised works to a scheduled monument;
 - a new offence in the 1979 Act of failing to comply with an enforcement notice to repair or remedy unauthorised works or damage to a scheduled monument;
 - a new offence in the 1990 Act of failing to comply with a TSN in respect of unauthorised works to a listed building; and
 - amendments to the criminal offences and defences under sections 2, 28 and 42 of the 1979 Act — relating respectively to unauthorised works, damage and use of a metal detector — that will place greater weight on those accused of offences under those sections to show that they had no

reason to believe a site was protected and that they took reasonable steps to check.

552. The three new offences are likely to only arise very rarely and would not be subject to prosecution in their own right; rather they would form additional charges in prosecutions for the more serious offences of unauthorised works or damage to a scheduled monument or listed building.
553. The amendments to the offences and defences in the 1979 Act are intended to increase the likelihood of successful prosecutions for unauthorised works or damage to a scheduled monument. Currently the number of prosecutions for such offences is low and, although the new provisions will increase that number, there is only likely to be an additional one to two cases over a five-year period.
554. This estimate of the volume of prosecutions for unauthorised works to scheduled monuments is based on a review of damage cases between 2006 and 2012. Four cases were subject to police investigation, but only one case was prosecuted. Two cases were dropped by the police and one by the Crown Prosecution Service, all on lack of evidence. Cadw's estimate is that least one of the three cases would have been prosecuted under the amended provision.
555. It is difficult to quantify the costs involved in such prosecutions. No academic research into the cost of such prosecutions has been carried out. Research by the Home Office on the economic and social costs of crime puts the average cost of criminal damage at £866 at 2003 prices. However, much of this cost is associated with the impact on the victim rather than the judicial process. In its *Annual Report and Accounts, 2013–14*, the HM Courts and Tribunals Service published information on the average daily staff and judicial costs for Crown and magistrates' courts, but due to the infrequency of prosecutions in England and Wales it is difficult to estimate the average duration of prosecution cases, which will also vary substantially according to complexity.
556. The summary table below (Table 15) shows a likely range of costs based on the prosecution costs awarded by a magistrates' court in north Wales in 2007 and by the Crown court in an English case in 2012. The latter case involved serious damage to a very well known scheduled monument and is likely to represent the upper limit of costs. Although a range of potential costs is offered there, the costs are best characterised as negligible.
557. It should be noted that the additional prosecution costs arising from the new provisions may also be partially offset by the award of costs following a successful prosecution. These costs would currently be lost as abortive costs by the police and Crown Prosecution Service when prosecutions are dropped because of lack of evidence.
558. The Bill also provides for a new right of further appeal to the county court in respect of the costs of urgent works to a listed building. This would follow the determination of an initial review by the Welsh Ministers, considered on their

behalf by the Planning Inspectorate. The number of review requests to the Welsh Ministers is presently low and equates to approximately one case every three to four years.

559. Welsh LPAs do not often undertake urgent works, largely because of the financial risk. The Bill seeks to increase the use of urgent works by broadening the scope of situations in which they can be employed and introducing land charges for the recovery of costs. If the frequency of urgent works increases, the number of review requests to the Welsh Ministers could increase to a maximum of one per year. This estimate takes into account advice from the Planning Inspectorate that they only receive one appeal against land charges every three to four years.
560. It is unlikely that many people would wish to pursue an appeal after receiving the determination of the Welsh Ministers, so it is estimated that there will be no more than one appeal to the county court in every five-year period. A case is likely to last no more than a day and, according to the HM Courts and Tribunals Service, the average daily staff and judicial costs in the civil courts amount to £1,522.⁴⁴

Table 15 — Summary table of justice impacts.

Who will be affected by this proposal (details from information provided above)	Volumes	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs (£)
Criminal Offences and Civil Penalties and Sanctions	1 to 2 cases over a 5-year period relating to unauthorised works and damage to scheduled monuments	Triable either way, but likely to be heard in a magistrates' court and be punishable by fine.	£60 to £7,500 per annum
Non-devolved — HM Courts and Tribunals Services	1 case over a 5-year period relating to a further appeal to the county court against the costs of urgent works	County court	£1,522 per case
Devolved Tribunals	Nil		
Legal Aid	Nil		

⁴⁴ The HM Courts and Tribunals Service, *Annual Report and Accounts, 2013–14*.

Prison and Offender Management Services

Offence	Maximum Penalty	No. of prosecutions brought per annum	Likely conviction rate	Likely sentence
Section 28 of the 1979 Act — deliberate destruction or damage of a scheduled monument	Unlimited fine or 2 years imprisonment	1 to 2 over 5 years	1 to 2 over 5 years	Imprisonment is a potential sanction, but this has never been used and only fines have been imposed as a sentence.

Section 9: Post-implementation review

561. The effect of the Historic Environment (Wales) Bill will be measured by a variety of means, mainly through the adaptation of existing data collection and recording, but also through evaluation of particular provisions.

562. One of the aims of the new Advisory Panel for the Welsh Historic Environment is to provide independent, expert advice to the Welsh Ministers on a range of matters relating to the formulation, development and implementation of policy and strategy in relation to the historic environment of Wales. The Bill, as the first substantive change to heritage legislation in 25 years, represents a central element of the Welsh Government's historic environment policy. While the precise content of the panel's work programme will be a matter for its own determination, the impact of the Bill will undoubtedly receive its detailed attention. The panel will be able to draw on data collected by Welsh Government officials, but it will be free to seek further information or undertake research as it sees fit.

Improving mechanisms for the sustainable management of the historic environment

- Heritage partnership agreements
- Reform of the scheduled monument consent process
- Certificates of immunity from listing
- Historic environment records

563. Trial projects for the HPAs that have been introduced in England have been the subject of some research. Although of slightly different character to the HPAs that the Bill will establish in Wales, this research will provide useful contextual data. Whether or not the Welsh Government is a consenting authority in the first HPAs to be negotiated in Wales, officials will seek to be involved in the formulation of the agreements.

564. Data on SMCs, scheduling designations and COIs are already subject to long-term recording by the Welsh Government. A report on the impacts of the legislative change will be prepared annually.

565. Placing the HERs on a statutory basis will ensure their long-term sustainability but should not affect their day-to-day operation. Any impacts will be kept under review by officials during annual support grant discussions with the WATs.

Introducing greater transparency and accountability

- Consultation and review of decisions to designate historic buildings and ancient monuments
- Statutory register of historic parks and gardens
- Advisory Panel for the Welsh Historic Environment

566. Data on statutory consultation and review numbers will be collected by the Welsh Government as part of the regular collection of data on designations. Officials will undertake an annual evaluation of the number of designations and the impact of the new review provisions.

567. Progress on the renotification process for historic parks and gardens as well as the addition of any new or partial entries to the register will be recorded and reported by officials.

More effective protection for listed buildings and scheduled monuments

- Extension of the definition of what sites may be scheduled
- Scheduled monument enforcement and temporary stop notices
- Amendments to the offences and defences in the 1979 Act
- Listed building temporary stop notices
- Extension of the scope of urgent works for listed buildings

568. The use of scheduled monument enforcement and temporary stop notices will be recorded by Welsh Government officials and reviewed annually to assess the impact of the new powers. Given that their use will be infrequent and sporadic, a more detailed evaluation project will be carried out after five years.

569. The conservation departments of the Welsh LPAs will be asked to provide information to the Built Heritage Forum on the use of listed building temporary stop notices and urgent works undertaken and associated land charges. Again, given that their use will be infrequent and sporadic, a more detailed evaluation will be carried out after five years to assess the impact of the new powers and the need for any additional guidance, support or training.

Annex 1 — Explanatory notes

HISTORIC ENVIRONMENT (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Historic Environment (Wales) Bill which was introduced into the National Assembly for Wales on 1 May 2015. They have been prepared by Cadw, the Welsh Government's historic environment division, in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

SUMMARY

2. The Historic Environment (Wales) Bill forms part of a suite of legislation, policy, advice and guidance to augment the existing systems for the protection and sustainable management of the Welsh historic environment. In broad terms, the Bill: creates new measures for the protection of listed buildings and scheduled ancient monuments; enhances existing mechanisms for the sustainable management of the historic environment; and introduces greater transparency and accountability into decisions taken on the historic environment.
3. The Bill contains provisions that:
 - allow the Welsh Ministers to put an immediate halt to unauthorised works to scheduled ancient monuments and make it easier for action to be taken against those who have damaged or destroyed monuments;
 - enable authorities to act quickly if a listed building is under threat from unauthorised works and give them greater flexibility in dealing with listed buildings that require urgent works to protect them from further decay;
 - make it easier for owners or developers to create sustainable new uses for unlisted historic buildings by relaxing the conditions for applications for certificates of immunity from listing;
 - allow owners of historic assets to negotiate partnership agreements with consenting authorities for a period of years, eliminating the need for repeated applications for consent for similar works and encouraging more consistent and coherent management of the buildings or monuments;
 - make new arrangements for the management of Wales' historic environment records, which provide detailed information and advice on the historic environment to local planning authorities and the public;
 - make existing structures for the designation of nationally important historic assets more open and transparent by introducing a requirement for consultation with owners and establishing a mechanism to review decisions;
 - require Welsh Ministers to compile and maintain a register of historic parks and gardens; and
 - establish an independent panel to advise on historic environment policy and strategy at a national level in Wales.

LEGAL BACKGROUND

4. The Historic Environment (Wales) Bill amends two principal pieces of legislation relating to the protection of the historic environment, the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The Bill also introduces new stand-alone provisions relating to historic environment records and an advisory panel for the historic environment in Wales.
5. The Ancient Monuments and Archaeological Areas Act 1979 provides for the designation and protection of scheduled monuments of national importance by the Welsh Ministers and makes it an offence to carry out works which affect a scheduled monument without the Welsh Ministers' consent. In addition, the Act gives the Welsh Ministers and local authorities power to designate areas of archaeological importance and provides protection for those areas.
6. The Planning (Listed Buildings and Conservation Areas) Act 1990 gives the Welsh Ministers powers to designate listed buildings of special architectural or historic interest. It also sets out a procedure for obtaining consent to carry out works which affect the character of listed buildings, establishes offences for unauthorised works and furnishes mechanisms for enforcement action. In addition, the Act places a responsibility on local planning authorities ("LPAs") to designate areas of special architectural or historic interest as "conservation areas" and review them periodically.

COMMENTARY ON SECTIONS

PART 1: OVERVIEW

Section 1 - Overview

7. Section 1 of the Historic Environment (Wales) Bill provides an overview of the provisions in the Bill. The Bill amends the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The Bill also introduces two new stand-alone provisions relating to historic environment records and an advisory panel for the historic environment in Wales.

PART 2: ANCIENT MONUMENTS ETC

Section 2 - Overview of this Part

8. Section 2 provides an overview of the provisions within this Part of the Bill, which makes amendments to the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act").

Section 3 - Amendments relating to the Schedule

9. Section 3(1) inserts new sections 1AA to 1AE into the 1979 Act placing a requirement on the Welsh Ministers to consult on certain amendments to the schedule of monuments ("the Schedule"); introducing interim protection pending decisions on certain amendments relating to the Schedule; and providing for the review of decisions on certain amendments relating to the Schedule.
10. Section 1(1) of the 1979 Act places a duty on the Welsh Ministers to compile and maintain the Schedule. Section 1(6) requires the Welsh Ministers, as soon as possible after including, amending or excluding an entry in the Schedule, to inform the owner, the occupier and any local authority in whose area the monument is

situated. There is no statutory requirement for the Welsh Ministers to consult with owners on any proposed scheduling and, consequently, there is no requirement to involve owners in the decision-making process.

11. 1AA Duty to consult on certain amendments relating to the Schedule

New section 1AA places a requirement on the Welsh Ministers to consult on proposals to include or exclude a monument from the Schedule, or make a material amendment relating to an entry in the Schedule.

12. A Schedule entry contains only the name of the monument, but is accompanied by a map identifying the exact extent of the monument that is protected. Section 1AA(5) defines a "material amendment" as one that adds to or reduces the area shown for the monument on such a map. If it is proposed to increase or reduce the area shown for a monument on the map, the Welsh Ministers must consult on the change.

13. The Welsh Ministers must carry out the consultation by serving notice of the proposal on the appropriate persons, as defined in section 1AA(3). Section 1AA(6) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.

14. Section 1AA(4) requires the notice to include specific information, including:

- the date by which the appropriate persons must make their written representations about the proposed scheduling (which must be at least 28 days from the date that the notice is served);
- an explanation that interim protection will apply where the proposal is to include a monument in the Schedule, or to make a material amendment in relation to an entry in the Schedule which would increase the area of land that is scheduled. The monument will then be protected as though it were scheduled in accordance with the proposal until a further notice is served on the owner, occupier and LPA. Any unauthorised works to the monument in the meantime will be a criminal offence; and
- the date that the interim protection takes effect, which may be the same date as that on which the notice of consultation is served on the appropriate persons (under section 1AA(2)).

15. Section 56 of the 1979 Act sets out how documents are to be served under the Act, and its provisions apply to the delivery of notices to the appropriate persons under new section 1AA.

16. 1AB Interim protection pending decisions on certain amendments relating to the Schedule

New section 1AB makes provision for monuments and areas of land to be given interim protection pending the decision of the Welsh Ministers on the making of certain amendments relating to the Schedule.

17. While a monument is being considered and consulted upon for scheduling, it needs to be protected from destruction, alterations or damage that may compromise its significance. Similarly, an area of land which the Welsh Ministers are considering adding to the area shown on a map as forming part of a scheduled monument needs

to be protected so that its significance cannot be compromised before the Welsh Ministers' decision is made.

18. Section 1AB(1) specifies that interim protection will apply where the Welsh Ministers have served a notice of a proposal either to include a monument in the Schedule, or to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
19. Section 1AB(2) sets out the date from which the interim protection will apply. The provisions of the 1979 Act have effect from that date as though the monument were in the Schedule, or as though the amendment to the map were made.
20. Section 1AB(4)-(5) makes provision that interim protection will cease when the Welsh Ministers:
 - include the monument in the Schedule;
 - serve notice on the owner/occupier and LPA that the monument will not be included on the Schedule;
 - make a material amendment that increases the area shown for the monument on a map that accompanies the monument's entry in the Schedule; or
 - serve notice on the owner/occupier and LPA that a material amendment of that kind will not be made.
21. Section 1AB(6) requires the Welsh Ministers to publish electronically a list of all monuments in relation to which interim protection has effect, and to provide a copy of any notice served under section 1AA on request.
22. **1AC Provisions applicable on lapse of interim protection**
New section 1AC introduces Schedule A1 into the 1979 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
23. **1AD Compensation for loss or damage caused by interim protection**
New section 1AD makes provision for compensation to be paid for loss or damage caused by interim protection if the Welsh Ministers decide not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
24. **1AE Review of decisions on certain amendments relating to the Schedule**
New section 1AE contains provisions for the review of the Welsh Ministers' decisions to make certain amendments relating to the Schedule.
25. At present, there is no statutory right to obtain a review of the Welsh Ministers' decisions relating to the Schedule, although those decisions may be challenged by judicial review. These provisions will create a structure for the review of decisions by the Welsh Ministers to make certain amendments relating to the Schedule.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

26. Under section 1AE there will be a right of review where the Welsh Ministers include a monument in the Schedule, or make a material amendment that adds to the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
27. Section 1AE(2) requires the Welsh Ministers to serve a notice on the owner and occupier (if the owner is not the occupier) informing them that the monument has been included in the Schedule, or that an amendment has been made that adds to the area shown for the monument, and that an application may be made to the Welsh Ministers requesting a review of the decision.
28. Section 1AE(3) requires the Welsh Ministers to undertake the requested review and to give effect to their decision on the review by amending the Schedule or map appropriately.
29. Section 1AE(4) specifies that a review decision can only be challenged in the High Court by way of section 55 of the 1979 Act. The only permitted grounds for a challenge under section 55 are that the decision was not within the powers of the 1979 Act or that relevant requirements have not been complied with and that the interests of the aggrieved person have been prejudiced as a result.
30. Section 1AE(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
31. Section 1AE(6) enables the Welsh Ministers to make regulations setting out the grounds on which reviews may be requested and other procedural matters.
32. Section 1AE(8) introduces Schedule A2 into the 1979 Act which allows the Welsh Ministers to appoint a person to make decisions on reviews.
33. Section 3(2) inserts new section 2(6A) into the 1979 Act which provides a defence for a person who is accused of carrying out unauthorised works to a monument on which interim protection has been conferred. The defence applies where the accused can prove that he or she did not know, and could not reasonably have been expected to know that interim protection had been conferred on the monument. If such a defence is raised, the prosecution will have to prove that, if an interim protection notice should have been served on the accused under section 1AA(2), it had been served.

Section 4 - Amendments relating to the Schedule: consequential provision

34. Section 4 makes consequential amendments to the 1979 Act as a result of introducing the consultation, interim protection and review provisions.
35. Section 4(1) inserts new section 1(5A) into the 1979 Act, signposting the new provisions about consultation by the Welsh Ministers on proposals to include or exclude a monument on the Schedule or to make a material amendment in relation to the Schedule.

36. Section 4(2) inserts new subsections (6B) and (6C) into section 1 of the 1979 Act. Section 1(6B) requires the Welsh Ministers to inform the owner and the occupier of a monument, and the local authority in whose area the monument is situated, where an amendment has been made to the area shown for the monument on the scheduling map, and to send them a copy of the amended map. Section 1(6C) signposts provisions about additional information that needs to be provided to owners and/or occupiers when certain amendments are made in relation to the Schedule.
37. Section 4(3) applies section 27 of the 1979 Act, which treats the depreciation of the value of an interest in land, to the compensation provisions for interim protection scheduled monuments in section 1AD.
38. Section 4(4) clarifies that section 55 of the 1979 Act applies to a review decision under section 1AE, so that a decision taken by the Welsh Ministers on a review may only be referred to the High Court on certain grounds.

Section 5 - Simplification of process

39. Section 5(1) inserts new subsections (5A) and (5B) into section 2 of the 1979 Act and section 5(2) inserts paragraph 1(3) into Part 1 of Schedule 1 of that Act. The new provisions enable regulations to be made to simplify the process by which scheduled monument consent (“SMC”) is applied for and granted.
40. Section 2(1) of the 1979 Act states that SMC is required for:
 - any works resulting in damage to or demolition of a scheduled ancient monument,
 - any works to remove or repair such a monument or part of it or any alterations or additions to it, and
 - any flooding or tipping operations on land in, on or under which there is a scheduled monument.
41. A significant proportion of SMC applications involve straightforward proposals, for example the like-for-like replacement of a stile, or the simple repair of erosion scars. Irrespective of the complexity of the work to be undertaken, a full application for SMC must currently be made in accordance with the requirements set out in regulations made under Schedule 1, Part 1, paragraph 1 of the 1979 Act.
42. New paragraph 1(3) of Part 1 of Schedule 1 enables regulations to be made by the Welsh Ministers to allow applications for SMC to be made in other ways. Those regulations may give the Welsh Ministers discretion to decide on the application procedure that may be appropriate.
43. New section 2(5A)–(5B) allows the Welsh Ministers to make regulations on the form and content of granting of SMC and removes the requirement that SMC must be granted in writing.
44. These regulation-making powers will enable the Welsh Ministers to introduce simplified procedures for applying for and granting SMCs. This could be done, for instance, by removing elements of the process – for example, the requirement to complete an application form or the need for the applicant to accept the terms of an

interim decision letter – where the application relates to simple and straightforward proposals for unobtrusive minor works and both the Welsh Ministers and the applicant are content to proceed by way of a simplified procedure.

Section 6 - Grant of consent for unauthorised works

45. Section 6 inserts new subsections (3A) and (3B) into section 2 of the 1979 Act. These provisions allow SMC to be granted for works already executed.
46. Section 2 of the 1979 Act makes it an offence to carry out specified works to a scheduled monument unless the Welsh Ministers have granted written SMC for those works. However, there is no legal mechanism to allow the Welsh Ministers to grant consent for works already undertaken.
47. In certain circumstances, it may be better to retain unauthorised works to a monument than to require their reversal particularly where their reversal could lead to further damage to the monument. For instance, works to remove the foundations constructed for a building or to reinstate a track could lead to further ground disturbance. The grant of SMC to authorise works already carried out and to control, through conditions, their completion would resolve uncertainties about the lawfulness of retaining the works and eliminate the prospect of future prosecution or other sanctions.

Section 7 - Offence of false information on application

48. Paragraph 2(1) of Schedule 1 to the 1979 Act allows the Welsh Ministers to refuse to entertain an application for SMC unless it is accompanied by a specified certificate. Paragraph 2(2) of Schedule 1 gives the Welsh Ministers power to make regulations regarding the form of such certificates and the further particulars that they must contain. Paragraph 2(4) of Schedule 1 makes it an offence to issue a certificate that purports to comply with the requirements of paragraph 2, but which contains a statement which is false or misleading in a material particular.
49. Section 7 amends paragraph 2(4) of Part 1 of Schedule 1 of the 1979 Act to clarify that it is also an offence to issue a certificate that purports to comply with any requirements contained in regulations made by the Welsh Ministers under paragraph 2 of Schedule 1, but which contains a statement that is false or misleading in a material particular.

Section 8 - Refusal of repeat applications etc

50. Section 8 inserts new paragraph 2B into Part 1 of Schedule 1 to the 1979 Act, enabling the Welsh Ministers to decline to consider an SMC application in certain situations.
51. There is currently no limit on the number of applications for SMC that might be submitted for the same or similar works, even when they have been previously refused.
52. New paragraph 2B provides the Welsh Ministers with a power to refuse to consider an application for consent where:
 - the application is similar to an application made within the previous two years and the Welsh Ministers consider that there has been no significant

change in any material consideration since the similar application was refused; or

- the application is made while a similar application is under consideration by the Welsh Ministers.

Section 9 - Power to hold inquiry or hearing

53. Section 9 inserts a new sub-paragraph (2A) into paragraph 3 of Part 1 of Schedule 1 to the 1979 Act.
54. Paragraph 3(2) of Schedule 1 provides that, before determining whether or not to grant SMC, the Welsh Ministers must hold a public local inquiry or provide the applicant with an opportunity to appear before and be heard by a person appointed by the Welsh Ministers.
55. Requests for hearings or public inquiries are very rare, but they can be requested when the issues being considered are straightforward and could be determined by a different method, such as the consideration of written representations.
56. Section 9 amends the 1979 Act to provide the Welsh Ministers with discretion (rather than a duty) to hold a public local inquiry or a hearing before determining whether or not to grant SMC. This does not affect the Welsh Ministers' duty to take account of any representations made by an applicant before making a decision on an SMC application.

Section 10 – Compensation for refusal of scheduled monument consent

57. Section 10 amends section 7 of the 1979 Act which regulates compensation if an applicant for SMC suffers loss or damage as a result of its refusal or its grant subject to conditions.
58. The section restricts the application of section 7(4) of the 1979 Act to England and inserts new subsection (4A). The new subsection sets out that in Wales no compensation will be payable if the works for which SMC was sought would have resulted in the total or partial demolition of a monument, unless those works would only have entailed operations directly related or incidental to the use of the monument's site for purposes specified in regulations issued by the Welsh Ministers.

Section 11 - Heritage partnership agreements

59. Section 11 inserts new sections 9ZA and 9ZB into the 1979 Act which make provision for heritage partnership agreements (“HPAs”) in Wales. In broad terms, HPAs are agreements between the Welsh Ministers and the owners of scheduled monuments which will grant SMC for a programme of specified works to be carried out within a fixed period, negating the need to apply for separate consent for each set of works.
60. **9ZA Heritage partnership agreement**
Section 9ZA(1) sets out that an agreement will be between the Welsh Ministers and the owner of a scheduled monument or of land adjoining or in the vicinity of a scheduled monument. Section 9ZA(2) allows for additional parties to an agreement, including any person with an interest in the asset, such as a community group, or any person involved in the management of the asset, such as a site manager.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

61. The HPA may grant SMC for specified works for the purpose of:
 - removing or repairing the scheduled monument, or
 - making any alterations or additions to the monument.
62. The agreement may also specify any conditions attached to that consent.
63. A HPA may not grant SMC for works that result in the demolition or destruction of, or any damage to, a scheduled monument (section 2(2)(a) of the 1979 Act) or for any flooding or tipping operations on land, in, on or under which there is a scheduled monument (section 2(2)(b) of the 1979 Act).
64. Section 9ZA(4) sets out the range of additional matters that may be covered in a HPA, including works that the parties agree would not require SMC.
65. Section 9ZA(6)-(7) defines "owner" for the purpose of HPAs and allows the Welsh Ministers to enter into an agreement with any one or more of the owners of a scheduled monument that is in multiple ownership, without having to enter into an agreement with all such owners.
66. **9ZB Heritage partnership agreement: supplemental**
New section 9ZB makes supplemental provision in relation to HPAs. Section 9ZB(1) specifies that such agreements must be in writing and must make provision for review, termination and variation by the parties.
67. Section 9ZB(2) makes it clear that more than one scheduled monument can be subject of an agreement, provided that in each case the Welsh Ministers and the owner are parties to the agreement.
68. Section 9ZB(3) sets out a range of matters about which the Welsh Ministers may make regulations, including consultation and publicity requirements, particular terms that must be included in an agreement and provision for termination of the agreement.
69. Regulations may also disapply, apply or reproduce, with or without modification, the provisions of the 1979 Act for the purpose of HPAs.
70. Section 9ZB(4) provides that HPAs will only be binding on parties to those agreements. Future owners of the scheduled monument will not be bound by an HPA, nor will they be able to benefit from the SMC associated with the agreement.

Section 12 - Enforcement notices

71. Section 12 inserts new sections 9ZC to 9ZH into the 1979 Act which allow the Welsh Ministers to issue scheduled monument enforcement notices.
72. Currently, if works have been carried out to a scheduled monument without authorisation from the Welsh Ministers, the 1979 Act makes no provision for enforcement other than prosecution. Similarly, if unauthorised works are underway to a scheduled monument, or are being carried out in breach of conditions to an SMC, there is no power in the Act to force an immediate stop to the work. The only recourse is for the Welsh Ministers to seek an injunction preventing further works.

73. **9ZC – Scheduled monument enforcement notice**
Section 9ZC (1)–(2) allows the Welsh Ministers to serve enforcement notices for unauthorised works carried out, or being carried out, to a scheduled monument or to land in, on or under which there is a scheduled monument. In considering whether to issue an enforcement notice the Welsh Ministers must have regard to the effects of the works on the monument as one of national importance.
74. Section 9ZC(3) sets out that the enforcement notice must specify the alleged contravention, the works that are to cease and/or the steps required to restore the monument or land to its former state. If the Welsh Ministers consider that restoration to its former state is not practicable or desirable, the enforcement notice may specify the steps required to alleviate the effect of the unauthorised works. An enforcement notice may also specify the steps required for bringing the monument or land to the state it would have been in if the conditions of any SMC for the works had been complied with.
75. The enforcement notice must also set the period within which the Welsh Ministers require the works to cease and the period within which the steps required to restore the monument, or alleviate the effects of the unauthorised works, must be carried out. Given that a range of works of differing urgency may be required, section 9ZC(6) allows the notice to specify different periods for compliance for different works or steps. For example, the notice may require immediate archaeological investigation followed by the subsequent production of a report of the findings.
76. **9ZD Scheduled monument enforcement notice: supplementary provision**
Section 9ZD(1) specifies on whom a copy of the scheduled monument enforcement notice must be served. In serving the documents, section 56 of the 1979 Act applies.
77. Section 9ZD(2) states that the Welsh Ministers may withdraw an enforcement notice and, if necessary, issue another. Section 9ZD(3) also enables the Welsh Ministers to amend the requirements imposed by an enforcement notice, for example by extending the deadline for compliance. However, the Welsh Ministers cannot amend an enforcement notice to impose more onerous requirements; if they wish to impose such requirements, they will need to withdraw the notice and issue a new notice.
78. Section 9ZD(5) requires the Welsh Ministers to publish a list of enforcement notices that have been issued and are still in effect, as well as to provide a copy of a notice on request.
79. **9ZE – Scheduled monument enforcement notice: appeal**
This section sets out the process and grounds for appeal against an enforcement notice. A person on whom an enforcement notice has been served under section 9ZD(1) may challenge the notice by appeal to a magistrates' court. The grounds for appeal are set out in section 9ZE(3).
80. The appeal must be made before the date on which the notice takes effect (under section 9ZC(3)(a)). Once an appeal has been lodged, the enforcement notice has no effect until the appeal is withdrawn or finally determined.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

81. Section 9ZE(6) allows an enforcement notice to be upheld even if it has not been served in accordance with section 9ZD, provided that no one with an interest in the monument or land is substantially prejudiced by the failure.
82. **9ZF Scheduled monument enforcement notice: power of entry**
Section 9ZF(1) gives a person authorised in writing by the Welsh Ministers the power: to enter land at a reasonable time to ascertain whether an enforcement notice should be served; to secure an enforcement notice to the monument or to some object on the site of the monument or on the land (if the last known place of abode of the owner or occupier cannot be found); and to ascertain whether an enforcement notice has been complied with.
83. Section 9ZF(2) allows a person authorised by the Welsh Ministers to enter the land at a reasonable time to undertake any works which have not been carried out within the period of compliance stated in the notice. It also provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.
84. Section 9ZF(3) limits the recovery of costs from owners receiving rent as a trustee for another person to the amount of money the trustee or agent has or has had in their hands on behalf of the beneficiary or principal.
85. If an occupier of a monument prevents an owner from undertaking required works, section 9ZF(4) permits the owner to apply to a magistrate for a warrant authorising entry to the land and the execution of the works.
86. **9ZG Failure to comply with scheduled monument enforcement notice**
Section 9ZG sets out that where an enforcement notice has not been complied with within the specified period of compliance, the owner of the monument or land is in breach of the notice and is guilty of an offence. The person may be convicted of more than one offence in relation to the same enforcement notice.
87. Section 9ZG(5)-(6) sets out the defences to the offence, and section 9ZG(7) makes provision for the imposition of financial penalties on summary conviction or on conviction on indictment.
88. **9ZH Effect of scheduled monument consent on notice**
Section 9ZH applies where a scheduled monument enforcement notice has been issued, and SMC is then granted under section 2(3A) of the Act for the retention of works (see section 6 above). In those circumstances, the enforcement notice will no longer have effect in so far as it requires such works to cease, steps to be taken involving the works or compliance of the works with the conditions of a previous SMC.
89. Section 12(2) amends section 46(3) of the 1979 Act so that the duty to pay compensation for damage caused to land when exercising a power of entry applies in relation to the new power of entry conferred by section 9ZF (Scheduled monument enforcement notice: power of entry).

Section 13 - Temporary stop notices

90. Section 13 inserts new sections 9ZI to 9ZL into the 1979 Act that provide for the issue of a temporary stop notice (“TSN”) for unauthorised works to scheduled monuments.
91. A TSN will allow the Welsh Ministers to require an immediate halt to unauthorised works before a scheduled monument is destroyed or damaged further. It will also provide a period of time to allow the situation to be assessed and for any arrangements for enforcement, prosecution or informal resolution to be put in place.
92. **9ZI - Temporary stop notice**
Section 9ZI(1)–(2) provides the Welsh Ministers with the powers to issue a TSN. A TSN may be issued where any works have been, or are being, executed to a scheduled monument or to land in, on or under which a monument is situated if it appears to the Welsh Ministers the works are unauthorised or fail to comply with a condition attached to a SMC and the Welsh Ministers consider that it is expedient to stop the works immediately, having regard to the effect of the works on the monument as one of national importance.
93. Section 9ZI(3) states that a TSN must be in writing and must specify the works which are to stop, explain why the TSN has been issued, and state that contravention of the TSN would be an offence.
94. Section 9ZI(4)–(5) regulates the arrangements for serving a TSN. The TSN must be displayed on the monument, or nearby if display on the monument might cause damage. In addition, the Welsh Ministers may serve a TSN on the person carrying out the works or causing them to be carried out, or on a person who has an interest in the monument or land. The TSN takes effect when the copy is first displayed on, or near, the monument. Section 56 of the 1979 Act applies to the service of the TSN.
95. Section 9ZI(7) states that the TSN ceases to have effect after a period of 28 days, or a shorter period that may be specified in the TSN. Section 9ZI(8) allows the Welsh Ministers to withdraw the TSN before the end of the 28-day period (or any shorter period specified). Section 9ZI(9) prohibits the issue of a further TSN in relation to the same works unless the Welsh Ministers have taken some other enforcement action in relation to the contravention, such as the service of an enforcement notice or the obtaining of an injunction under section 9ZM.
96. **9ZJ Temporary stop notice: power of entry**
Section 9ZJ allows the Welsh Ministers to authorise a person in writing to enter land to ascertain whether a TSN should be served, to place or remove a TSN, to determine if a TSN has been complied with, and to consider a claim for compensation. The authorised person may only enter the land at a reasonable time and does not require the explicit authority of the owner.
97. **9ZK Temporary stop notice: offence**
Section 9ZK(1)–(2) sets out the circumstances in which a person is guilty of an offence for contravening a TSN and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence in relation to a TSN if the TSN is breached repeatedly.

98. Section 9ZK(3)-(4) sets out the defences to an offence under this section.
99. Section 9ZK(5) sets out the penalty for the offence of contravening of a TSN. Since deliberate damage to a monument may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence.
100. **9ZL Temporary stop notice: compensation**
Section 9ZL(1)-(2) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the service of the TSN. Compensation is limited to circumstances where the works specified in the TSN do not contravene sections 2(1) or 2(6) of the 1979 Act (either because SMC has been granted on or before the date the TSN is first served or SMC is not required) or where the Welsh Ministers withdraw the TSN other than following the grant of SMC authorising the works (for example, because it is discovered that the works were not unauthorised and that the TSN should not have been served).
101. Section 9ZL(4) specifies that no compensation will be payable for loss or damage that could have been avoided if the claimant had provided information required under section 57 of the 1979 or had otherwise cooperated with the Welsh Ministers when responding to the TSN.
102. Section 13(2) applies section 27 of the 1979 Act, which treats the depreciation of the value of an interest in land, to the compensation provisions for TSNs for scheduled monuments in section 9ZL.
103. Section 13(3) amends section 46(3) of the 1979 Act so that the duty to pay compensation for damage caused to land when exercising a power of entry applies in relation to the new power of entry conferred by section 9ZJ.

Section 14 - Injunctions

104. Section 14 inserts new section 9ZM into the 1979 Act, which explicitly permits the Welsh Ministers to apply to the High Court or the county court for an injunction if they consider it necessary or expedient to restrain an actual or apprehended contravention of section 2(1) or (6) of the 1979 Act.

Section 15 - Control of works affecting scheduled monuments

105. Section 15 inserts new section 2(8A) into the 1979 Act to modify one of the current defences to the offence of carrying out unauthorised works to a scheduled monument.
106. Section 2 of the 1979 Act provides for the control of works affecting scheduled monuments through the requirement for SMC and is supported, in subsections (1) and (6), by criminal offences. Under section 2(8), it is currently a defence to some of those offences for the accused to prove, on the balance of probabilities, that he or she did not know and had no reason to believe that the monument was within the area affected by the works, or that the monument was scheduled.
107. Section 15 disapplies the section 2(8) defence in relation to Wales and replaces it with the new defence in section 2(8A). This new defence requires a person accused

of executing, causing or permitting unauthorised works in relation to a scheduled monument in Wales to prove, in addition, that he or she took all reasonable steps to find out whether the area affected by the works contained a scheduled monument. Such steps might include, for example, checking Cadw's publicly accessible online information on the location and extent of a scheduled monument.

Section 16 - Damaging certain ancient monuments

108. Section 16 amends section 28 of the 1979 Act by inserting a new subsection (1A), which modifies the offence of destroying or damaging a protected monument. A "protected monument" is a monument which is:
- i. an ancient monument (as defined in section 61(12) of the 1979 Act), or
 - ii. a monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act.
109. Under section 28(1), a person who without lawful excuse destroys or damages any protected monument, knowing that it is protected and intending to destroy or damage the monument, or being reckless as to whether the monument would be destroyed or damaged, is guilty of an offence. No offence will be committed if the person did not know that the monument was a protected monument.
110. Section 16 disapplies the section 28(1) offence in relation to Wales and replaces it with the new offence in section 28(1A), which states that a person who destroys or damages a protected monument is guilty of an offence if the person knew or ought reasonably to have known that it was a protected monument.

Section 17 - Restrictions on use of metal detectors

111. Section 17 amends section 42 of the 1979 Act by inserting new subsection (8), which modifies the current defence to the offence of using a metal detector in a protected place. A "protected place" is a place which is:
- i. the site of a scheduled monument or a monument which is under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act, or
 - ii. situated in an area of archaeological importance.
112. Section 42 of the Act makes it an offence to use a metal detector in a protected place in Wales without the written consent of the Welsh Ministers. Under subsection (7), it is currently a defence for the accused to prove that he or she had taken all reasonable precautions to find out whether the place where the metal detector was used was protected and did not believe that it was. This defence places responsibility on the accused to show that appropriate precautions were taken, but does not test whether the accused's belief that the site was not protected was a reasonable belief.
113. Section 17 disapplies the section 42(7) defence in relation to Wales and replaces it with the new defence in section 42(8), which requires the accused to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place, and that he or she did not know, and had no reason to believe, that it was protected.

Section 18 - Register of historic parks and gardens

114. Section 18(1) inserts a new section 41A into Part 3 of the 1979 Act, which places a duty on the Welsh Ministers to compile and maintain a register of historic parks and gardens of special historic interest.
115. A non-statutory register of parks and gardens has already been compiled by the Welsh Government to identify sites of special historic interest and to aid their informed conservation by owners, LPAs, developers, statutory bodies and all others concerned with them. Because the register is non-statutory, some sites that meet the published criteria have not been included since the landowners would not give their permission. This has compromised the register's ability to present a comprehensive picture of known historic parks and gardens of special historic interest.
116. **41A Register of historic parks and gardens in Wales**
The definition of historic parks and gardens is included in section 41A(1)–(2). It includes parks, gardens, designed ornamental landscapes, places of recreation and other designed grounds, which could include, for example, cemeteries. In identifying parks and gardens of special historic interest, the Welsh Ministers are required by subsection (2) to decide whether to include land adjacent to the grounds being registered, or any building or water on the land within the grounds. This will allow the exercise of professional judgement in the definition of the most logical boundary line. For example, a grand splayed entrance to a driveway, which is outside the walls of an estate but clearly part of the design, could be included in a register entry. Alternatively, a modern greenhouse or stable block could be excluded from an entry.
117. Section 41A(3)–(4) provides the Welsh Ministers with the power to add, remove or amend entries to the register, but when doing so they must inform the owner, the occupier and the relevant local authority or National Park authority. When informing the relevant people under subsection (4) the Welsh Ministers may rely on section 56 of the 1979 Act (service of documents).
118. Section 41A(6) requires the Welsh Ministers to publish the up-to-date register. The register be supported by a publicly accessible, map-based, online record on which all nationally designated and registered historic assets will be depicted.
119. Section 18(2) amends section 50 of the 1979 Act to allow parks and gardens of special historic interest on Crown land to be included on the register of historic parks and gardens in Wales.

Section 19 - Land believed to contain an ancient monument: power of entry

120. Section 19 inserts new section 26(4) into the 1979 Act to further specify the powers of entry of a person authorised by the Welsh Ministers.
121. Section 26(1) of the 1979 Act provides the Welsh Ministers with a power to authorise entry to any land where they know or have reason to believe there is an ancient monument (which may be, but need not be, a scheduled monument) for the purpose of inspecting the land to record matters of archaeological or historical interest. The power is limited in 26(3) by the requirement for the consent of the owner prior to any excavation, even when an ancient monument is at risk of imminent damage or destruction that could result in the loss of unique information.

122. New section 26(4) enables a person authorised by the Welsh Ministers to enter land to undertake archaeological excavations without the consent of the landowner, if an ancient monument is known, or believed, to be at risk of imminent damage or destruction. Such circumstances could include unauthorised works, damage or natural deterioration in the condition of the monument arising, for instance, from coastal erosion where cliff collapses can leave archaeological remains exposed or vulnerable.

Section 20 - Monuments in territorial waters

123. Section 20 amends section 53 of the 1979 Act, providing clarity about the circumstances in which a monument in territorial waters is to be treated as being in Wales for the purposes of the Act. New subsection (2B) states that a monument in territorial waters is not to be treated as being in Wales unless it is situated in Wales as defined in section 158 of the Government of Wales Act. This definition of Wales includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

Section 21 - Service of documents by electronic communication

124. Section 21 amends section 56 of the 1979 Act by making provision for the service of documents by electronic means.

125. Section 56 of the 1979 Act makes provision for the service of a document by:

- delivering it to the person on whom it is to be served;
- leaving it at the usual or last known place of abode of that person;
- sending it in a pre-paid registered letter or by recorded delivery; or
- affixing it to the monument or to some object on the site of the monument, when the usual or last known address of the person cannot be found.

It does not currently allow documents to be served electronically.

126. Section 21(1) inserts new section 56(1)(ca) into the 1979 Act, which allows any document or notice under the Act to be served by electronic means under specified circumstances. It is unlikely that the Welsh Ministers would choose to serve a TSN by electronic means only and a copy of the notice must, in any event, be displayed on the monument or land in question.

127. Section 21(2) inserts new section 56(1A) into the 1979 Act, which sets out specific requirements with which documents served electronically must comply.

Section 22 - Meaning of “monument” in the Ancient Monument and Archaeological Areas Act 1979

128. Section 22 amends the definition of a monument in section 61(7) of the 1979 Act to include sites that provide evidence of past human activity but are devoid of structures or works.

129. Many important archaeological sites in Wales, particularly those from the distant Palaeolithic and Mesolithic periods, consist of nothing more than artefact scatters or other insubstantial traces of human activity. Such sites do not currently fall within the definition of a “monument” and so cannot be scheduled.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

130. New section 61(7)(d) expands the definition of a “monument”. This will enable sites of national importance that provide evidence of past human activity to be designated as scheduled monuments by the Welsh Ministers.
131. Section 22(3) applies the Government of Wales Act 2006 definition of “Wales” to allow for the scheduling of non-structural sites out as far as the seaward boundary of the territorial sea.

PART 3: LISTED BUILDINGS

Section 23 – Overview of this Part

132. Section 23 provides an overview of the provisions within this Part of the Bill which make amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”).

Section 24 - Amendments relating to the listing of buildings

133. Section 24 inserts new provisions into the 1990 Act which place a duty on the Welsh Ministers to consult on certain changes to lists, to make arrangements for interim protection pending decisions as to whether to list buildings, and to provide for the review of certain listing decisions.
134. Currently, section 1 of the 1990 Act places the Welsh Ministers under a duty to compile a list of buildings of special architectural or historic interest. Section 1(4) requires the Welsh Ministers before compiling, approving or modifying any list, to consult with “such other persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest”. Currently there is no statutory requirement on the Welsh Ministers to consult with owners or occupiers of buildings being considered for listing.
135. Section 24(1) inserts new sections 2A to 2D into the 1990 Act to create mechanisms for consultation on listing decisions and their review.
136. **2A Duty to consult on certain changes to lists**
If the Welsh Ministers propose to include a building on the list or remove one from the list, new section 2A requires them to consult the appropriate persons, including the owner and occupier of the building, as listed in subsection (3). Section 2A(5) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.
137. The Welsh Ministers must consult the appropriate persons by serving a notice upon them. The notice must give the appropriate persons at least 28 days to respond. If the proposal is to include a building in the list, the notice must explain that interim protection applies to the building until notified otherwise and that any unauthorised works to the building in the meantime will constitute a criminal offence.
138. Section 329 of the Town and Country Planning Act 1990 applies (by virtue of section 89 of the 1990 Act) to the service of notices under new section 2A.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

139. 2B Interim protection pending certain listing decisions

New section 2B makes provision for interim protection for buildings which the Welsh Ministers are proposing to include in the list under section 1 of the 1990 Act.

140. Currently, a building is not afforded any additional protection during the listing process. In rare instances, owners who have learned that their buildings were likely to be listed have deliberately altered, damaged or destroyed those buildings in order to avoid that outcome.

141. In order to address this risk, new provisions are required to provide interim protection for buildings during the consultation process.

142. New section 2B(1) sets out the circumstances in which interim protection will apply.

143. Section 2B(2) sets out that interim protection applies from the beginning of the day specified in the notice served under section 2A, and that all the provisions of the 1990 Act (other than sections 47 to 51 and 59 – provisions relating to compulsory acquisition of listed buildings and acts causing or likely to result in damage to listed buildings) have effect from that date as if the building were a listed building.

144. Section 2B(4) makes provision for the cessation of interim protection following a decision by the Welsh Ministers to list, or not to list, the building.

145. Section 2B(5) requires the Welsh Ministers to publish electronically a list of all buildings granted interim protection, and to provide a copy of any notice served under section 2A on request.

146. 2C Provisions applicable on lapse of interim protection

New section 2C introduces Schedule 1A into the 1990 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to list a building.

147. 2D Review of certain listing decisions

New section 2D makes provision for the review of certain listing decisions.

148. There is currently no statutory right to obtain a review of a decision by the Welsh Ministers to list a building, although such a decision may be challenged by judicial review. These provisions will create a structure for the review of decisions to list buildings.

149. Section 2D applies where the Welsh Ministers include a building on the list. Section 2D(2) requires the Welsh Ministers to serve a notice on the owner and occupier of the building informing them that the building has been included in the list and that they may make an application to the Welsh Ministers requesting them to review their decision.

150. Section 2D(3) requires the Welsh Ministers to carry out a review if requested to do so, and to make a decision on the review. It also requires them to amend the list if it is necessary to do so to give effect to the final decision.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

151. Section 2D(4) prohibits any legal challenge to the validity of a decision made on a review, unless that challenge is brought by means of proceedings in the High Court under sections 62 and 63 of the 1990 Act. The decision may only be challenged under sections 62 and 63 on the grounds that the decision was not within the powers of the Act, or that any of the relevant requirements had not been complied with in relation to the decision and that the interests of the aggrieved person had been prejudiced as a result.
152. Section 2D(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
153. Section 2D(6) enables the Welsh Ministers to make regulations setting out the grounds on which an application for a review may be made and other procedural matters relating to reviews.
154. Section 2D(7) introduces Schedule 1B into the 1990 Act which allows the Welsh Ministers to appoint a person to make decisions on reviews.
155. Section 24(2) inserts new subsection (3A) into section 9 of the 1990 Act. This new subsection provides a defence for a person who is accused of carrying out unauthorised works to a building on which interim protection has been conferred. The defence applies where the person can prove that he or she did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building. If such a defence is raised, the prosecution will have to prove that, if an interim protection notice should have been served on the person under section 2A(2), it had been served.
156. Section 23(3) inserts new section 28B into the 1990 Act which makes provision for compensation for loss or damage caused by interim protection if the Welsh Ministers decide not to include a building on the list.

Section 25 – Amendments relating to the temporary listing of buildings

157. If an LPA believes that a building that may merit listing because of its special architectural or historical interest is in imminent danger of destruction or alteration that threatens its character as a building of interest, it may serve a building protection notice (“BPN”) under section 3 of the 1990 Act. A BPN will take effect as soon as it is served on the owner and occupier and remain in force for up to six months. Section 3(5) specifies that while the BPN is in force, the provisions of the 1990 Act (with the exception of section 59) shall apply to the building as if it were listed. Prior to the service of the BPN, the LPA must have asked the Welsh Ministers to consider the building for listing.
158. Section 25 limits section 3 of the 1990 Act to England and introduces a new section 3A, which applies the fundamental structure of the BPN legislation in the 1990 Act to Wales while taking account of the new provisions for interim protection under section 24 of the Bill.
159. Section 3A(4) establishes that a BPN will cease to have effect if the Welsh Ministers serve a consultation notice that triggers interim protection under new section 2A(2)

or the Welsh Ministers notify the LPA in writing that they do not intend to consult under new section 2A on a proposal to include the building in a list.

160. Section 3A(5) specifies that while the BPN is in force, the provisions of the 1990 Act with the exception of sections 27-51 and section 59 (compulsory acquisition of listed buildings in need of repair and acts causing or likely to result in damage to listed buildings) apply.
161. Section 3A(6) makes provision that where interim protection supersedes a BPN, anything done under section 3A(5) of the 1990 Act while the BPN was in force, such as a grant of listed building consent ("LBC") or the service of a listed building TSN, shall be treated as if it had been done under interim protection by virtue of new section 2B(2).
162. Section 3A(7)-(8) requires the LPA to notify the owner and occupier of the building immediately if the Welsh Ministers advise that they do not intend to consult under new section 2A on a proposal to include the building in a list. The LPA may not serve another BPN on the building for a period of 12 months.
163. Section 25(4) clarifies aspects of compensation arrangements in instances where a BPN was in force immediately before interim protection began. It adds subsections (4) and (5) to new section 28(B) of the 1990 Act (compensation for loss or damage caused by interim protection). For the purposes of compensation, interim protection is to be treated as beginning at the time that the BPN came into force.
164. Section 25 (5) inserts new subsection (1A) into section 29 of the 1990 Act. It specifies that anyone who had an interest in a building at the time that a BPN was served shall be entitled to compensation from the LPA for any loss or damage directly attributable to the effect of the notice if the BPN ceases by virtue of its expiration at the end of six months (section 3A(3)(b)) or the Welsh Ministers' notification to the LPA that they do not intend to consult under new section 2A on a proposal to include the building in a list (section 3A(4)(b))

Section 26 - Amendments relating to the listing of buildings: consequential provision

165. Section 26 makes amendments to the 1990 Act in consequence of the introduction of new requirements for consultation, interim protection and review of listing decisions.
166. Section 26(3) inserts new subsections (3A) and (3B) into section 2 of the 1990 Act. New section 2(3A) requires the Welsh Ministers to inform the LPA of their decision to include or remove a building from the list. It also requires the Welsh Ministers to inform the owner and occupier if a building has been removed from a list. The further steps that the Welsh Ministers must take when they include a building in a list are contained in new section 2D, and new section 2(3B) signposts this provision.
167. Section 21(4) of the 1990 Act allows an applicant making an appeal to the Welsh Ministers against an LPA's handling of an LBC application for a building under a BPN to include a claim that the building should not be included on the statutory list.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

Section 26(7) of the Bill amends that section of the Act so that it will also apply to a building under interim protection.

168. Section 26(8) applies section 31 of the 1990 Act, which treats the depreciation of the value of an interest in land, to the compensation provisions for interim protection to listed buildings in new section 28B of the 1990 Act, which will be inserted by section 24 (3) of the Bill.
169. Section 26(10) gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation for loss or damage arising from interim protection.

Section 27 - Issue of certificate that building not intended to be listed

170. Section 27 inserts new section 6A into the 1990 Act.
171. The 1990 Act provides for the issue of a certificate of immunity from listing (“COI”), which guarantees that a building will not be listed for 5 years from the date of issue and prevents an LPA from serving a building preservation notice in relation to the building during the same period. Currently a COI application for a building can only be made where an application has been made for planning permission or planning permission has been given. This poses a risk to developers and owners, who may have already invested time and resource in planning a project before they are able to apply for a COI in conjunction with a planning application. Listing at a late stage in the preparation of a planning proposal can cause delay and other hardship to an owner or developer.
172. New section 6A will relax the rules governing applications for a COI, so that they can be made at any time. This will enable owners and developers to seek guarantees that their buildings will be immune from listing without having to incur the cost associated with an application for planning permission.

Section 28 - Heritage partnership agreements

173. Section 28 inserts new sections 26L and 26M into the 1990 Act, which make provision for heritage partnership agreements (“HPAs”) relating to listed buildings. At present, owners of complex or multiple historic assets may have to apply for an array of separate consents if they wish to carry out management programmes for their properties. In such cases, HPAs will provide a more positive approach for the sustainable management of listed buildings and bring a reduction in the number of consent applications.
174. **26L Heritage partnership agreements**
The Welsh Ministers or a relevant LPA may make an HPA with an owner of a listed building or part of a listed building in Wales, and any persons mentioned in section 26L(2) or (4) may be an additional party to the agreement.
175. Section 26L(6)–(7) sets out that an HPA may incorporate LBC for specified works under section 8(1) of the 1990 Act and any conditions attached to that consent. An HPA may not, however, grant consent for the demolition of a listed building or any other permission, such as planning permission.

These notes refer to the Historic Environment (Wales) Bill which was introduced to the Assembly on 1 May 2015.

176. Section 26L(8) sets out the range of additional matters that may be covered in an HPA, including works that the parties agree would not affect the character of the listed building and, therefore, do not require LBC.
177. Section 26L(10) defines "owner" and "relevant local planning authority" for the purpose of HPAs.
178. **26M Heritage partnership agreements: supplemental**
New section 26M makes supplemental provision in relation to HPAs. Section 26M(1) provides that such agreements must be in writing and make provision for review, termination and variation by the parties.
179. Section 26M(2) allows an HPA to cover more than one listed building, provided that in each case a relevant LPA (or the Welsh Ministers) and an owner are parties to the agreement. For example, an HPA could include all the listed bridges in the ownership of a local authority.
180. Section 26M(3) sets out a range of matters on which the Welsh Ministers may make regulations including consultation and publicity requirements, any particular terms that must be included in an agreement and provisions for termination of the agreement. Regulations may also disapply, apply or reproduce, with or without modifications, certain provisions of the 1990 Act for the purpose of HPAs.
181. Section 26M(4) provides that HPAs will only be binding on the parties to those agreements. Future owners and occupiers of those buildings will not be bound by those agreements, nor will they be able to benefit from any LBC provided by the agreement.

Section 29 - Temporary stop notices

182. Section 29 inserts new sections 44B to 44D into the 1990 Act which makes provision for TSNs for listed buildings.
183. **44B Temporary stop notices**
Unauthorised works often destroy the historic fabric, and can damage the special interest, of listed buildings. The 1990 Act makes it an offence to carry out unauthorised works to a listed building or fail to comply with the conditions of an LBC. The same Act makes provision for the service of a listed building enforcement notice to require the restoration of a listed building after unauthorised works, or steps to alleviate the effects of such works. A listed building enforcement notice cannot come into effect earlier than 28 days after its service. If an appeal is lodged against it, an enforcement notice will not take effect until the appeal has been determined or withdrawn, unless a court determines otherwise.
184. Sections 44B to 44D will provide LPAs with a power to serve a TSN requiring the immediate cessation of unauthorised works for a period of 28 days whilst a solution to the situation is sought.
185. An LPA may serve a TSN if it appears to the LPA that works are being or have been carried out to a listed building without consent or in breach of a condition attached to a consent and the LPA considers that it is expedient to stop those works

immediately, in consequence of their effect on the character of the building as one of special architectural or historic interest (section 44B(1)–(2)).

186. Section 44B(3) requires the notice to be in writing and to specify the works which are to stop, explain why the notice has been issued and state that contravention of the notice would be an offence. The works specified in the TSN need not include all of the works that are underway. For example, an LPA may wish to stop the alteration or removal of a particular feature, such as a window, which is part of a wider programme of works, but may be satisfied that the remainder of the programme of works has been authorised by LBC or consists of simple repairs that will not affect the character of the building.
187. Section 44B(7) states that a TSN ceases to have effect after a period of 28 days, or a shorter period that may be specified in the notice. Section 44B(8)–(10) states that an LPA may withdraw the notice before the end of 28 days (or any shorter period specified), but a further TSN cannot be issued for the same works unless another enforcement action has been taken in relation to the contravention, for example, the service of a listed building enforcement notice or the obtaining of an injunction (under section 44A of the 1990 Act). There is no requirement for the TSN to be accompanied or followed by a listed building enforcement notice or any other enforcement action.
188. Section 44B(11) allows the Welsh Ministers to make regulations that exempt certain works, or works in certain circumstances, from the effects of a TSN. This provides some flexibility for the Welsh Ministers to adapt the use of TSNs in light of experience of their use.
189. **44C Temporary stop notices: offence**
The execution of works to a listed building without LBC is an offence under section 9 of the 1990 Act, and may also be an offence under section 59 of that Act.
190. New section 44C sets out the circumstances in which a person is guilty of an offence for contravening a TSN and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence if a TSN is breached repeatedly.
191. Section 44C(3)–(4) sets out the defences to an offence under this section.
192. **44D Temporary stop notices: compensation**
Section 44D(1)–(3) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the service of a TSN. Compensation is limited to those circumstances where the works specified in the notice do not contravene sections 9(1) or 9(2) of the 1990 Act (either because LBC has been granted on or before the date the TSN is first served or LBC is not required), or where the LPA withdraws the notice other than following the grant of LBC authorising the works (for example, because it is discovered that the works were not unauthorised and that the TSN should not have been served).
193. Section 44D(4) specifies that no compensation will be payable for loss or damage that could have been avoided if the claimant had provided information required

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under the provisions mentioned in section 44D(6) or had otherwise cooperated with the LPA when responding to the TSN.

194. The provisions mentioned in section 44D(5) are section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which gives local authorities powers to obtain details of persons interested in land, and section 330 of the Town and Country Planning Act 1990, which allows the LPA or the Welsh Ministers to require information as to interests in land.
195. Section 29(2) applies section 31 of the 1990 Act, which treats the depreciation of the value of an interest in land, to the compensation provisions for TSNs for listed buildings in section 44D.
196. Section 29(3) amends section 82A(2) of the 1990 Act (Crown application) so that the provisions which deal with TSNs bind the Crown, except those in section 44C which make it an offence to contravene a TSN.
197. Section 29(4) amends section 88 of the 1990 Act (rights of entry) to allow LPAs to authorise a person in writing to enter land for the purpose of displaying or removing a TSN, ascertaining whether a TSN has been complied with and considering a claim for compensation.
198. Section 29(5) gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation arising from the service of a TSN.
199. Section 29(6) amends Schedule 2 of the 1990 Act so that on the lapse of a building preservation notice any TSN which has been served on the building ceases to have effect.

Section 30 - Urgent works: extension of scope and recovery of costs

200. Section 30 inserts new sections 54(4A), 54(5A) and 55(5A)-(5G) into the 1990 Act. These provisions extend the scope of the urgent works that local authorities or the Welsh Ministers may carry out to preserve a listed building, provide a right of appeal against the Welsh Ministers' decision as to the expenses that may be recovered in respect of such works, and allow land charges to be created to secure the payment of those expenses.
201. Local authorities have a range of statutory enforcement powers at their disposal to deal with buildings that are vulnerable or at risk. The 1990 Act already provides for the issue of repairs notices and the execution of urgent works on listed buildings under sections 38 and 54 respectively. The powers in section 54 may be exercised by the Welsh Ministers too.
202. At present, however, urgent works can only be carried out under section 54 to preserve unoccupied buildings or the unused parts of occupied buildings. This limitation means that urgent works cannot be carried out where a building at risk is underused, but not vacant, or where it is fulfilling its intended use as a warehouse or barn even though it is rarely visited.

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203. New section 54(4A) amends the circumstances under which urgent works can be undertaken to preserve listed buildings in Wales. It enables urgent works to be carried out on any listed building in Wales as long as it does not unreasonably interfere with its residential use. For example, works may be urgently required to a listed building's roof and rainwater goods in order to preserve the building. If the building is not in residential use, for example a barn or warehouse, it will now be possible to carry out those works. It will also be possible to carry out those works if the building is in residential use, provided that the works do not interfere unreasonably with its residential use.
204. Section 30(3) inserts new subsection (5A) into section 54 of the 1990 Act, which requires an occupier of a building which is in residential use to be given not less than seven days notice of the intention to carry out urgent works to the property.
205. If local authorities or the Welsh Ministers incur expenses in undertaking urgent works to a listed building they may recover these expenses in accordance with section 55 of the 1990 Act. Section 55 provides that the process of recovery is initiated through the service of a notice on the owner. The owner may contest the recovery of expenses by making representations to the Welsh Ministers on the grounds set out in section 55(4). The Welsh Ministers determine the amount that is recoverable.
206. Section 30(6) inserts new subsection (5A) into section 55 of the 1990 Act which allows an owner of a listed building, within 28 days of receiving the decision of the Welsh Ministers as to the amount that is recoverable, to appeal that decision to the county court. A local authority may also appeal against the Welsh Ministers' decision in the same way.
207. There are currently no provisions in the 1990 Act for the authorities to recover the expenses by way of a charge on the property and LPAs therefore have to pursue recovery through the courts, which can be a lengthy and expensive process.
208. Section 30(6) also inserts new subsections (5B) to (5G) into section 55 of the 1990 Act which provide for the expenses incurred in carrying out the urgent works to be a land charge. The new subsections also provide for interest to be added to the sum owed, set out the manner in which a land charge takes effect, and specify that the LPA can rely on certain powers and remedies in the Law of Property Act 1925 to enforce the charge, including a power to appoint a receiver.

Section 31 - Service of documents by electronic communication

209. Section 31 amends subsection 89(1A) of the 1990 Act which sets out restrictions on when documents can be served electronically. Section 31 removes this restriction in relation to buildings in Wales, allowing all documents to be served by electronic communications.

Section 32 - Determination of appeals by appointed person: supplementary provision

210. Section 32 inserts new paragraph 7(3) into Schedule 3 of the 1990 Act. The new paragraph provides that where the Welsh Ministers appoint a member of staff of the Welsh Government to determine an appeal under Schedule 3, the functions of

determining the appeal and of doing anything in connection with the appeal are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This enables the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions. .

PART 4: MISCELLANEOUS

Section 33 - Historic environment records

211. Section 33 places a duty on each LPA to create and maintain an up-to-date historic environment record ("HER") for its particular area.
212. For those making decisions about the sustainable management of the historic environment, HERs are critical sources of information. That information is an important starting point for management processes, conservation, fieldwork and research, and public engagement and outreach relating to the historic environment. It forms the basis for archaeological and other heritage management advice provided to LPAs. Without such information, the essential advice that informs, for example, the impact on the historic environment of development proposals, would be brought into question.
213. Subsection (2) sets out the range of information that must be contained in an HER. Paragraphs (a) to (d) require details of those historic assets that are statutorily protected or registered under the 1979 or 1990 Acts to be included. Paragraphs (e), (f) and (g) require the inclusion of details of conflict sites, historic landscapes and world heritage sites.
214. Paragraph (h) requires the inclusion of details of every other area, site or place which the authority considers to be of historic, archaeological or architectural interest. These may include details of historic assets that local communities have identified as being of local significance.
215. Paragraph (i) requires the incorporation of information about the way in which the historic, archaeological or architectural development of an area has contributed to its present character. This information may be obtained from ongoing urban and rural characterisation programmes and processes such as conservation area appraisals. These area-based studies add value by explaining how the historic environment contributes to the distinctive local/regional character of an area and how this character can be conserved for the future.
216. Subsections (3) to (8) define the different terms used in section (3) to describe what a historic environment record must contain.
217. Subsections (9) and (10) enable the Welsh Ministers to amend, by regulations, the categories of information that must be contained in an HER. The Welsh Ministers must consult LPAs and any other persons they consider appropriate before making the regulations.

Section 34 - Publication

218. Section 34 requires an HER is to be a publicly available resource, access to which should be available free of charge. An LPA must also furnish professional advice

and assistance to help users locate and interpret information contained in an HER.

219. Subsection (3) gives the relevant authorities the power to impose charges in order to recover the costs of providing certain services associated with an HERs, for example, the production of reports based on analysis of HER content. No profit will be made from such charges, which will be limited to the costs of providing the service.

Section 35 - Arrangements for discharge of functions

220. Regulations made under sections 19 and 20 of the Local Government Act 2000 enable LPAs to make arrangements for their HER-related functions to be discharged for the areas of two or more local planning authorities. Section 35(3) also enables them to make arrangement for the discharge of their HER-related functions by a person other than a local authority. The Welsh archaeological trusts are already maintaining non-statutory historic records and it is anticipated that the powers in section 35(3) will be used by LPAs to make arrangements for the Welsh archaeological trusts to discharge the HER-related functions on their behalf. Prior to entering into any agreement for the discharge of functions, an authority must secure the approval of the Welsh Ministers for the proposed arrangements to ensure that they meet the standards set out in guidance issued under section 36.

Section 36 - Guidance

221. Section 36 allows the Welsh Ministers to issue guidance on: creating and maintaining HERs, the publication of HERs and the charging of fees in connection with those publication functions, and the making of arrangement for the discharge of HER-related functions. Prior to issuing the guidance, the Welsh Ministers must consult with the LPAs and any other person that the Welsh Ministers consider appropriate.

Section 37 - Establishment of Panel and work programme

222. Section 37 requires the Welsh Ministers to establish the Advisory Panel for the Welsh Historic Environment ("the Panel"). The purpose of the Panel is to provide expertise and a diversity of perspectives on a broad range of policy and strategy developments and activities relating to the wider historic environment, including properties in State care. These activities include the gathering, recording and interpretation of information such as research, survey activities and excavation; the conservation of the historic environment, including identifying assets of national significance and applying the appropriate legislative protection; and public engagement with the historic environment, including active participation and access to historic assets and information.
223. The Panel will be required to prepare a three-year work programme and submit a draft to the Welsh Ministers for approval. The Welsh Ministers may approve the work programme with or without modifications. The Panel must publish the approved work programme.
224. The work programme may be reviewed and amended during the three-year period to respond to new issues as they arise, but if the amendments are significant they will need to be agreed by the Welsh Ministers. The work programme as amended must be published.

Section 38 - Constitution etc

225. Section 38 makes provision about the membership of the Panel and about its legal status.

PART 5: GENERAL

Section 39 - Regulations and orders

226. Section 39 makes a number of amendments to the 1979 Act and the 1990 Act in order to clarify the Welsh Ministers' powers to make regulations and orders under those Acts and the procedures which apply to the making of those regulations and orders. The amended provision in section 60 of the 1979 Act and section 93 of the 1990 Act will apply to the making of regulations under the new provisions inserted into those Acts by this Bill.
227. Subsection (2) amends section 60(2) of the 1979 Act. It affirms that the power of the Welsh Ministers to make regulations under the Act or an order under sections 3, 37 or 61 is exercisable by statutory instrument.
228. Subsection (2) also requires a statutory instrument containing regulations under new sections 1AA (duty to consult on certain amendments relating to the Schedule) or 9ZB (heritage partnership agreement) of the 1979 Act to be laid in draft before the National Assembly for Wales and approved by a resolution before the instrument can be made. The subsection also establishes that any other statutory instruments containing regulations or orders made by the Welsh Ministers under the 1979 Act, except under section 19, will be subject to annulment by resolution of the National Assembly for Wales.
229. Subsection (3) amends section 93(1) of the 1990 Act to confirm that the Welsh Ministers may make regulations under that Act for Wales.
230. Subsections (4)–(5) require any statutory instrument containing regulations under new sections 2A (duty to consult on certain changes to lists) or 26M (heritage partnership agreements) of the 1990 Act to be laid in draft before the National Assembly and approved by a resolution before the instrument can be made. Any other regulations under the Act will be subject to annulment by resolution of the National Assembly of Wales.
231. Subsection (11) requires a statutory instrument containing regulations under section 33(9) (power to vary meaning of “historic environment record”) to be laid in draft before, and approved by a resolution of, the National Assembly for Wales before the instrument can be made
232. Subsection (12) allows a statutory instrument containing regulations under section 38(7)(h) (Advisory Panel for Welsh Historic Environment: disqualification from membership for staff of specified organisations) to be made by the Welsh Ministers, but gives the National Assembly for Wales the power to annul any instrument so made.

Section 40 - Coming into force

233. Section 40 sets out the provisions that will come into force on the date of Royal Assent; those that will come into force two months after Royal Assent; and those that will be brought into force by an order made by the Welsh Ministers.

Section 41 – Short title

234. This section sets out the Act's short title.

Schedule 1

235. Schedule 1 is introduced by section 3(3) of the Bill, and inserts Schedule A1 and Schedule A2 into the 1979 Act.

236. Schedule A1 – Lapse of interim protection

Schedule A1 contains provision which applies where interim protection ceases to have effect as a result of a decision by the Welsh Ministers:

- not to include a monument in the Schedule, or
- not to make a material amendment that increases the area shown for a monument on a map that accompanies its entry in the Schedule.

237. A person can still be prosecuted for certain offences committed while the interim protection had effect, despite the fact that the interim protection has lapsed. The Welsh Ministers may also recover expenses incurred in undertaking work under section 9ZF(2) following a failure to comply with an enforcement notice which was served while the interim protection had effect. However, various other provisions of the 1979 Act that cease to have effect on the lapse of interim protection: for example, SMC, enforcement notices and TSNs.

238. Schedule A2 - Decisions on reviews by person appointed by Welsh Ministers.

Paragraph 1 of Schedule A2 allows the Welsh Ministers to make regulations setting out the classes of reviews on which decisions are to be made by a person appointed by the Welsh Ministers. It is intended that the regulations will provide for all classes of reviews to be undertaken by the Planning Inspectorate.

239. Paragraph 2 sets out the powers and duties of an appointed person. The appointed person has the same powers and duties as the Welsh Ministers to carry out the review, to make a decision on the review and to decide on the procedures and conduct of the review and the costs associated with it.

240. A decision of an appointed person cannot be challenged except by way of section 55 of the 1979 Act. In addition, an application to the High Court under section 55 cannot be made on the grounds that the decision should have been made by the Welsh Ministers instead of the appointed person, unless the appointed person's power to make the decision was challenged before the decision on the review was taken.

241. Paragraph 3 makes provisions for the Welsh Ministers to revoke an appointed person's authority and appoint another person to undertake the review.

242. Paragraph 4 allows an appointed person to appoint an assessor to provide advice on any matters arising at a local inquiry or hearing, or in written representations made

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in connection with the review. Sub-paragraph (2) applies provisions of the Local Government Act 1972 which allow an appointed person to summon a person to attend and provide evidence at an inquiry. Refusal to attend will render a person liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, imprisonment for a term not exceeding six months, or both.

243. Paragraph 5 allows the Welsh Ministers to direct that anything that should have been done by the appointed person, with the exception of making a decision on a review, may be done instead by the Welsh Ministers. This enables the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations or evidence, and the notification of a decision are to be undertaken by them.
244. Paragraph 6 allows an appointed person to delegate to another person anything that would fall to be done by the appointed person except for the conduct of a local inquiry or hearing or the making of a decision on the review. This enables the appointed person to delegate administrative tasks, such as the notification of a review application, the notification of hearing/inquiry timetables and details and the circulation of statements and representations.
245. Paragraph 7 provides that where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to a review, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.

Schedule 2

246. Schedule 2 is introduced by section 24(4) of the Bill, and inserts Schedule 1A and Schedule 1B into the 1990 Act.
247. **Schedule 1A - Lapse of interim protection**
Schedule 1A contains provision which applies where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to list a building. In those circumstances, any proceedings arising out of an application for LBC or any consent granted will lapse, and any enforcement notices or TSNs served on the building will cease to have effect. However, the criminal liability of any person for an offence committed during the interim protection period will persist.
248. **Schedule 1B - Decisions on reviews by person appointed by the Welsh Ministers**
Paragraph 1 enables the Welsh Ministers to make regulations that prescribe the class of review on which decisions are to be made by a person appointed by the Welsh Ministers. The intention is that the regulations will provide for all classes of review to be decided by the Planning Inspectorate.
249. Paragraph 2 sets out the powers and duties of an appointed person. The appointed person has the same powers and duties as the Welsh Ministers to carry out the review, to make a decision on the review and to decide on the relevant procedure.
250. Paragraph 3 makes provision to allow the Welsh Ministers to revoke an appointed person's authority and appoint another person to undertake the review.

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251. Paragraph 4 allows an appointed person to appoint an assessor to provide advice on any matters arising at a local inquiry or hearing, or in written representations. Sub-paragraph (2) applies provisions within the Local Government Act 1972 which allow an appointed person to summon a person to attend and provide evidence at an inquiry. Refusal to attend will render a person liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, imprisonment for a maximum of six months, or both.
252. Paragraph 5 allows the Welsh Ministers to direct that anything that should be done by the appointed person, with the exception of making a decision on a review, may be done instead by the Welsh Ministers. This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations and evidence and the notification of a decision are to be undertaken by them.
253. Paragraph 6 allows an appointed person to delegate to another person anything that would fall to be done by the appointed person except for the conduct of a local inquiry or hearing or the making of a decision on the review. This enables the appointed person to delegate administrative tasks such as the notification of hearing/inquiry timetables and details and the circulation of statements and representations.
254. Paragraph 7 provides that where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to a review, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.