

Consultation Response Form

The Use of Planning Conditions for Development Management

We want your views on our proposals for amendments to some non-domestic permitted development rights in Wales. Your views on the draft text for the subsequent Amendment Order and draft Technical Guidance document are also sought.

Please submit your comments by: 25/04/2014

If you have any queries on this consultation, please email: planconsultations-b@wales.gsi.gov.uk or telephone Owain Williams on 029 2082 1715.

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
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E-mail address	tim.howard@archaeologists.net	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: IfA welcomes the opportunity to update and revise conditions relating to the historic environment and, in particular, archaeology, which no longer fully reflect current policy and practice. The comments below relate to conditions insofar as they affect the historic environment.				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

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Q3	Do you consider: (i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
The six tests remain relevant today and IfA proposes no additional tests.

Q4	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

Q5	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
Save that paragraph 5.46 might helpfully make clear that, where sites contain both scheduled and unscheduled land, planning conditions in relation to the unscheduled part of the site might need to mirror or supplement conditions attached to scheduled monument consent.

Q6	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

Comments:
 This may help to facilitate the more nuanced approach to the imposition and discharge of archaeological conditions advocated below.

Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q8	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: No Comment.				

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Subject to the additions suggested below.				

Q12	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Archaeology Conditions (22 to 24) General Comments The key role which the planning system plays in the management and protection of the historic environment (and particularly that part of the historic environment - the vast majority - which is undesignated) is underpinned by the use of conditions to secure public benefit. For the system to work effectively in this regard it is important that <ul style="list-style-type: none"> • conditions are formulated clearly, recognising the nature of archaeological evidence and the multi-staged nature of most programmes of archaeological work (including post-excavation analysis, archiving and dissemination) • conditions are effective to secure the carrying out of all stages of necessary archaeological work • all necessary archaeological work is carried out to professional standards and by practitioners with appropriate expertise • the early discharge of conditions does not undermine the local planning authority's ability to ensure that all necessary archaeological work is carried out. Specific Comments Proposed Model Condition 22 IfA supports the inclusion of this condition save that the reference to 'an archaeologist' in the second line of the draft condition needs to be clarified in				

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order to avoid ambiguity. Those words should be replaced by 'a suitably qualified accredited archaeologist'. This largely mirrors the reference in draft model condition 27 to a 'suitably qualified competent person' but provides greater precision and avoids difficulties in defining competence. IfA accredits archaeologists, individually, through its validation process: see <http://www.archaeologists.net/regulation/accreditation>. (IfA also accredits archaeological organisations through registration under its Registered Organisations scheme: see <http://www.archaeologists.net/regulation/organisations>. All four Welsh Archaeological Trusts, for instance, are IfA Registered Organisations.)

Proposed Model Condition 23

This condition should be deleted. It no longer reflects current policy or practice (informed by the polluter pays principle). It does not require a developer to obviate, mitigate or compensate for the impact of development upon the historic environment and ultimately places an unwarranted burden on local authorities.

Nor is this proposed condition effective in dealing with unexpected discoveries. Proposed model condition 78 could be used to cover such an eventuality although this should be identified in Appendix A as having a wider application than 'Listed Building (protection of features)'.

Proposed Model Condition 24

This proposed condition needs to be substantially reworded more fully to reflect the multi-staged nature of most programmes of archaeological work. Such programmes typically include

- site investigation, prior to, or sometimes integrated with, construction ground works
- an assessment of the discoveries on completion of the site investigation, with proposals for their analysis
- the analysis and publication of the discoveries, and the deposition of the site archive (a process which can take some years to complete in the case of large or complex investigations).

Not all these stages can reasonably be implemented before development commences. Furthermore, the failure clearly to articulate them on the face of planning conditions has produced uncertainty as to when archaeological conditions can be discharged and the risk that such conditions will be discharged before the public benefits from later stages of programmes have been secured.

The following suggested condition(s) recognise(s) the need to avoid unduly constraining development while providing mechanisms to ensure that the later stages of a programme are implemented:

'A) No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording

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2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a suitably qualified accredited archaeologist or archaeologists / archaeological organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.'

Given Welsh Government's proposed approach to the structuring of decision notices (an approach which IfA endorses - see question 6), the above suggested provisions should be framed as separate (but linked) conditions.

IfA would expect adherence to professional standards and the use of suitably qualified accredited archaeologists to be covered in the Written Scheme of Investigation.

Additional Suggested Condition

Proposed model condition 71 provides for fencing to protect listed buildings from inadvertent damage during development. Although archaeological sites are also vulnerable to such damage there is no similar provision in this respect. This should be remedied either by extending model clause 71 to refer in its title (and in the square brackets in the text itself) to archaeological assets, or by the inclusion of a separate, similarly-worded model condition relating specifically to archaeological assets.

Listed Buildings (71 to 80)

See above in relation to proposed model condition 71.

The concerns expressed above in relation to proposed model condition 23 are similarly applicable to proposed model condition 73. This should be deleted and replaced by the following which can be adapted to apply to both planning permissions and listed building consents:

'No development / works to which this permission / consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.'

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See above in relation to proposed model condition 78.

Q13	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Insofar as issues of enforceability, precision and reasonableness are raised above.				

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Yes - See above.				

General

Q15	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
IfA would be happy further to engage with Welsh Government and other stakeholders in order to ensure that fit-for-purpose conditions relating to the historic environment are formulated.	

I do not want my name/or address published with my response (please tick)

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : planconsultations-b@wales.gsi.gov.uk [Please include 'Conditions Consultation – WG-19178' in the subject line]
Post
Please complete the consultation form and send it to: Conditions Consultation Development Management Branch Planning Division Welsh Assembly Government Cathays Park Cardiff CF10 3 NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-b@wales.gsi.gov.uk Telephone: Owain Williams on 029 2082 1715