

Regulations and Guidance Consultation 1
Legislation and Policy Team
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Welsh Government
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29 September, 2016

**Consultation on proposals for secondary legislation to support the Historic Environment
(Wales) Act 2016 and various best-practice guidance documents¹**

Dear Sir / Madam,

Thank you for the opportunity to contribute to the consultation on proposals for secondary legislation to support the Historic Environment (Wales) Act 2016 and various best-practice guidance documents.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. We promote high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provide a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,300 members and more than 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

CIfA's Wales / Cymru Group has over 300 members practising in the public, private and voluntary sector in Wales.

Proposals for secondary legislation to support the Historic Environment (Wales) Act 2016 and various best-practice guidance documents

General comments

CIfA welcomes Welsh Government's recognition of the immense value of the historic environment in Wales and of the need to ensure that it *'is appreciated, protected, actively managed and made accessible for the general well-being of future generations'* (paragraph 1 of the consultation document).

The identification of a shared vision of *'the Wales we want'* (in particular, a *'society that promotes and protects culture, heritage and the Welsh language'*) through the well-being goals of the Well-being of Future Generations Act 2015 is valuable. This provides a touchstone for the assessment of the regulations and guidance in question by the Institute and other stakeholders.

Specific consultation questions

Q1. Do you agree that the interest rate that should be included in regulations is the Bank of England Base Rate plus 2%?

1.1 Yes.

Q2. Do you agree with the time period in which a claim for compensation associated with a temporary stop notice must be made?

2.1 Yes.

Q3. Do you agree with the mechanism proposed for a simplified scheduled monument consent process for uncontentious works?

3.1 Yes, provided that

- 'uncontentious works' are clearly and carefully defined so as to include only low impact works since 'minor works' can in some circumstances have a disproportionate and deleterious effect upon historic assets
- such works are required to be carried out by competent (and, where appropriate, accredited) experts in accordance with professional standards. Such requirements should be made explicit in the phrasing of standard conditions.

Q4. Do you agree that a heritage impact statement should be required for every application for scheduled monument consent (unless otherwise agreed with the Welsh Ministers), listed building consent and conservation area consent?

4.1 Yes, although the relationship between such statements and archaeological desk-based assessments and the results of field evaluations is not clear. Archaeological desk-based

assessments and the results of field evaluations should be an integral part of heritage impact statements and this needs to be clearly spelled out in guidance. Furthermore, there are professional standards for both desk-based assessment and field evaluation² and standards for any wider heritage statement should be formulated consistently with these.

Q5. Do you agree that heritage impact statements should replace design and access statements for listed building consent applications?

5.1 Yes.

Q6. Do you agree that an access statement should be required in any heritage impact statement where the proposed works would alter the means of access to or within a listed building?

6.1 Yes.

Q7. Do you agree with the proposed contents for a heritage impact statement?

7.1 Yes, save for the following.

7.2 The guidance needs a separate section on archaeological desk-based assessments and field evaluations to make clear their role in heritage impact assessment (see paragraph 4.1 above).

7.3 The reference to expertise in page 4 of the draft is welcomed, but we would prefer to see a reference to accredited expertise or at least some indication of the professional bodies (including ClfA) which provide such validation of competence. Nor is there any reference to professional standards in the draft.

7.4 Although the draft guidance makes clear that it is the impact upon the significance of historic assets which should be assessed (a significance-based approach), in some parts a more fabric-based approach appears and the reference in the first bullet point on page 9 to loss of '*significant fabric*' appears to conflate the two approaches. It is understandable that a document such as this should refer to 'fabric' but this needs to be balanced. Thus, for instance, the reference to '*loss of historic fabric*' in the first bullet point on page 8 might be better phrased '*loss of, or damage to, historic fabric or its significance*'.

7.5 We welcome the reference to historic environment records in the last bullet point on page 6 but feel that this might be given greater prominence in this context.

7.6 It is logical to separate 'Mitigation' and 'Offsetting' in sections 4 and 5 of the draft guidance since, strictly speaking, offsetting does not mitigate harm but rather compensates for it. However, the definition of 'Mitigation' in the glossary of terms accompanying the consultation draft of TAN 24 ('*Mitigation is the action taken to avoid, minimise or offset any harm to the significance of a historic asset*') [my underlining] is inconsistent with this. 'Mitigation' can be used as a term of art and either approach can be adopted, but the two documents should be mutually consistent.

7.7 The penultimate paragraph on page 11 refers to the need for proportionality, but links that in part to the *'degree of change'* proposed. Even relatively small changes can in certain circumstances have a disproportionate effect upon the significance of historic assets. It would be better to refer to the degree or scale of impact rather than the degree of change in this context.

7.8 The final entry in the *'Example Summary Heritage Impact Statements'* relating to a scheduled monument gives no indication of the nature or extent of archaeological assessment or evaluation required and gives the impression in the final column (mitigation strategy) that it may be possible to build a garage in the area of the scheduled monument involving the destruction of archaeological remains (*'May still require archaeological excavation or watching brief'*).

Q8. Does the guidance, *Heritage Impact Assessment in Wales*, clearly articulate when, why and how to use the heritage impact assessment process and provide useful advice on the presentation of the heritage impact statement?

8.1 Yes, subject to the issues identified above.

Q9. Will *Managing Change to Listed Buildings in Wales* provide useful guidance for the owners of listed buildings and their agents?

9.1 Yes.

Do you have any suggestions as to how it can be improved?

9.2 The *'Fast Facts'* and *'Introduction'* on pages 1-2 of the draft guidance identify significance as a key concept and section 2 on *'Significance'* introduces architectural and historic interest. The guidance would benefit from further clarification of the relationship in this context between *'interest'* (a statutory term) and *'significance'* (a policy term). Such clarification would also provide an opportunity to explain the relevance of archaeological interest (or evidential value in the terminology of Cadw's *Conservation Principles*) and the fact that many listed buildings have archaeological interest.

9.3 The references to expertise on pages 7 and 8 of the draft are welcomed, but we would prefer to see a reference to accredited expertise. By contrast, the first sentence under section 5.2 on page 13 of the draft refers to accredited professionals.

9.4 The reminder in section 4.11 on page 11 of the draft that information gathered should be placed in the local historic environment record is helpful. It would also be helpful to make clear that recording investigation and analysis (as described in the second sentence of this section) can include archaeological work, which should be carried out in accordance with ClfA Standards and guidance³.

9.5 The Checklist of Supporting Documents on page 15 contains information on the content of Heritage Impact Statements. The second sentence should refer to consideration of whether proposals would *'damage the fabric and/or its significance'* including its archaeological (or evidential) value.

Q10. Will Managing Change in World Heritage Sites in Wales be effective in helping decision makers protect the Outstanding Universal Value of Welsh World Heritage Sites?

10.1 Yes, subject to the following caveats and comments.

10.2 The chart showing 'World Heritage Governance in Wales' on page 6 is clear and helpful.

10.3 The draft guidance rightly highlights the fact that World Heritage Site status is a material consideration in the determination of planning applications and that significant parts of World Heritage Sites are often further protected by specific statutory designation. The guidance should also make clear (in section 2.2) that the impact of development on all historic assets (not just those statutorily designated or identified by local planning authorities as historic assets of special local interest) is a material consideration in the planning process.

10.4 Section 4.3 on permitted development rights is welcome. This is a significant issue in World Heritage Sites and might benefit from fuller and firmer guidance (building, for instance, on the recognition, in relation to local development plans at page 13 of the draft, that World Heritage sites need protection *'from the effect of changes that are relatively minor but which, on a cumulative basis, could have a significant effect'*).

10.5 The Glossary is useful, but contains some definitions (for instance, 'buffer zones' and 'sustainable development') defined in different terms in the glossary of draft TAN 24. The documents should be mutually consistent, if necessary cross-referring.

Q11. Will the guidance assist in the consistent management of World Heritage Sites in Wales, especially those which are located in more than one local authority area?

11.1 Yes, provided there is the resource and resolve to pursue the approaches advocated in the draft guidance.

Q12. Will Managing Conservation Areas in Wales encourage local planning authorities to adopt a consistent approach to conservation areas across Wales?

12.1 Yes.

Do you have any suggestions as to how it can be improved?

12.2 The reference to archaeological value in relation to historic interest as a criterion for defining special interest on page 3 of the draft is welcome, but we would like to see clearer recognition of the potential for archaeological interest (in both above-ground and buried

remains) to contribute to the special interest and character of a conservation area. In fairness, there is some acknowledgement of this in the reference to *'hidden histories – archaeological potential'* on page 5, but a more explicit statement such as that in paragraph 53 of Historic England's *Conservation Area Designation, Appraisal and Management*⁴ would be helpful.

12.3 In the bullet points in page 5 of the draft setting out common themes in conservation appraisals it would be simpler and clearer to refer to *'undesigned historic assets'* rather than *'undesigned historic assets of special local interest'* (see below under question 13).

12.4 The advice in the last paragraph of section 4 on page 6 of the draft formally to adopt management plans is sound, but might be better phrased *'... so that it will have more weight as a material consideration in planning decisions'*. (Compare the penultimate sentence on page 10 of the draft: *'Guidance will have more weight if it is adopted as supplementary guidance.'*)

12.5 It is understandable that there is an emphasis on 'buildings' in this draft, but references such as that in the first bullet point on page 9 and in section 7.2 of the draft to 'buildings' might, where appropriate, be broadened to refer to 'buildings and other assets'. Moreover, the bulleted list on page 10 should include *'protecting archaeological remains'*.

Q13. Do the general principles and advice on good practice in Managing Lists of Historic Assets of Special Local Interest in Wales provide sufficient guidance for local planning authorities to set up and use local lists? Do you have any suggestions as to how the guidance can be improved?

13.1 No. ClfA's primary concern about Welsh Government's approach to lists of historic assets of special local interest is twofold.

13.2 Firstly, the use of the word 'special' in relation to undesigned assets of local interest potentially adds an unwarranted gloss to the definition of historic asset (namely, something of sufficient significance to warrant consideration in the planning process). This can be seen in particular in the table on page 3 of the draft helpfully setting out sample criteria for assessing special local interest. The description accompanying 'Archaeological Interest' includes reference to *'Sites with compelling and identifiable archaeological evidence'* [my underlining], but this sets too high a bar, particularly given the need for archaeological interest to embrace archaeological potential.

13.3 Secondly, notwithstanding the acknowledgement in section 1 of the draft that the *'...list will include other, but not necessarily all, local historic assets which are not already designated ...'*, there is a real risk that such lists will in practice be regarded as exclusive – a risk which is reinforced by the fact that the current suite of best-practice guidance documents refers almost exclusively to historic assets of special local interest (as opposed simply to undesigned historic assets). Furthermore, this draft states at page 5 that: *'The ad hoc identification and consideration of sites through the development management*

process, in response to planning applications or pre-application enquiries, is not an appropriate way to identify historic assets of special local interest'. Although this may not be the preferred approach, it does happen in practice and the historic assets identified are historic assets nonetheless. Systematic survey may be appropriate for identifying some types of asset, but sites of archaeological interest will continue to be uncovered through the operation of the planning process.

13.4 ClfA welcomes the consideration of permitted development rights and Article 4 Directions in section 4.1 of the draft, since the threats posed by the exercise of permitted development rights are particularly acute in the case of undesignated assets which rely on the planning regime to provide their primary (if not only) means of protection in the face of development. However, the final sentence of the first paragraph on page 8 leaves the reader with a lukewarm impression of the value of Article 4 Directions. Either such directions are the answer to this threat to undesignated assets (in which case they should be strongly promoted), or they are not, in which case Welsh Government needs to find another solution.

Q14. Does Setting of Historic Assets in Wales adequately explain why setting is important and how it should be assessed?

14.1 Yes, subject to the following comments.

14.2 We particularly welcome the recognition that

- the principles outlined in this guidance *'are applicable to all individual historic assets irrespective of their designation'* (Statement of Purpose, page i) (consistently, for instance, with paragraphs 6.4.6 and 6.5.4 of draft Chapter 6 of Planning Policy Wales)
- historic assets *'that are buried also have a setting'* (section 1: What is Setting, page 2)
- *'potential buried or archaeological elements surrounding the historic asset'* can contribute to its setting (text box, page 3).

14.3 Notwithstanding the recognition in the first bullet point above, the main text concentrates almost exclusively on designated assets, giving the impression at times (for instance, in the first paragraph of section 2.2) that the setting of undesignated assets is not relevant.

14.4 The fifth bullet point of the Fast Facts correctly identifies that any assessment needs to be proportionate to the significance of the asset (and requires sufficient information and assessment to establish that significance) and the extent of the impact upon that significance. The final reference in that paragraph, however, to the need for the methodology and level of information to be *'proportionate to the case'* is imprecise and should be replaced by *'proportionate to that significance and impact'*. Furthermore, the reference in the penultimate paragraph on page 4 to the need for proportionality to *'be determined by the likely impact of the proposal on the setting of the historic asset'* needs qualifying (perhaps by the addition of the words *'and its significance'* since a severe impact

upon the setting of an asset with little significance will be dealt with in a different way to a similar impact upon the setting of an asset of huge significance.

14.5 ClfA welcomes the reference to expertise on pages 4 and 5 of the draft but we would prefer to see a reference to accredited expertise or at least some indication of the professional bodies (including ClfA) which provide such validation of competence.

14.6 ClfA repeats the observations made at paragraph 7.6 above in relation to section 5 of the draft on Offsetting.

Q15. Does the guidance explain the visual and especially the non-visual components of setting sufficiently?

15.1 Yes, although case studies may be helpful to illustrate such components.

Q16. Does the guidance explain how to take the visual and non-visual components of setting into account during the assessment process? Do you have any suggestions as to how it can be improved?

16.1 Yes, subject to the comments above.

The Institute looks forward to continuing to work with Welsh Government and other stakeholders in the implementation of the Historic Environment (Wales) Act 2016 and the production of supporting regulation, policy and advice. In the meantime, if there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,



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Chief Executive, Chartered Institute for Archaeologists

¹ <http://gov.wales/consultations/cultureandsport/proposals-for-secondary-legislation-to-support-the-historic-environment-wales-act-2016/?lang=en>

² http://www.archaeologists.net/sites/default/files/CifAS&GDBA_2.pdf and
http://www.archaeologists.net/sites/default/files/CifAS&GFieldevaluation_1.pdf

³ <http://www.archaeologists.net/codes/cifa>

⁴ *'Archaeological remains, whether aboveground structures, earthworks, or buried deposits, often contribute directly to sense of place as well as representing a potential resource for research, interpretation and education':* <https://content.historicengland.org.uk/images-books/publications/conservation-area-designation-appraisal-management-advice-note-1/heag040-conservation-area-designation-appraisal-and-management.pdf/>