

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
Wednesday, 10 June 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Sarah Beasley
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Agenda

1 Introductions, apologies, substitutions and declarations of interest

2 Historic Environment (Wales) Bill: evidence session 2 – Welsh Local Government Association (9.15 – 10.15) (Pages 1 – 30)

Chris Llewelyn, Director of Lifelong Learning, Leisure and Information, Welsh Local Government Association

Peter Thomas, Senior Planner Conservation & Design, Vale of Glamorgan Council

Stephen Smith, Design and Conservation Team Leader, City and County of Swansea

3 Historic Environment (Wales) Bill: evidence session 3 – Welsh Archaeological Trusts (10.15 – 11.15) (Pages 31 – 44)

Paul Belford, Trust Director, Clwyd–Powys Archaeological Trust

Ken Murphy, Trust Director, Dyfed Archaeological Trust

Andrew Davidson, Chief Archaeologist, Gwynedd Archaeological Trust

Andrew Marvell, Chief Executive, Glamorgan–Gwent Archaeological Trust

4 Papers to note (Pages 45 – 57)

5 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting (discussion of evidence received on the Historic Environment (Wales) Bill; consideration of draft report on the Renting Homes (Wales) Bill)

6 Historic Environment (Wales) Bill: discussion of evidence received in sessions 2 and 3 (11.15 – 11.30)

7 Renting Homes (Wales) Bill: consideration of draft report (11.30 – 12.30) (Pages 58 – 173)

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Historic Environment (Wales) Bill

Evidence to the
Communities, Equality
& Local Government
Committee

May 2015



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.
 2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh local government and the communities they serve.
 3. The WLGA welcomes this opportunity to contribute to the inquiry into the general principles of the Historic Environment (Wales) Bill. As requested, the Association have framed our response in line with the terms of reference.
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General Principles of the Historic Environment (Wales) Bill

4. The WLGA has been pleased to engage with the drafting of this Bill through its representation on the Bill External Reference Group and through more focused discussions with officials. In general, the Association welcome the Bill and the increased powers of protection of the historic environment afforded to local authorities.
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Giving more effective protection to listed buildings and scheduled monuments

5. Local authorities and national parks, through their planning powers, are key players in managing Wales' historic environment. Local planning authorities have powers and responsibilities with regards to world heritage sites, listed buildings, conservation areas and historic features such as parks and gardens. Local planning authorities undertake a regulatory role for example by considering listed building consent applications through to a proactive role in securing external funding such as Townscape Heritage Initiative funding from Heritage Lottery Fund and implementing comprehensive schemes of heritage renewal.

6. Local planning authorities have significant powers relating to listed buildings including urgent works. The WLGA welcome the provisions in the Bill to extend the scope of urgent works to occupied and unoccupied buildings alike and the change to facilitate the recovery of expenses from urgent works through a legal charge upon the land. In this financial climate, difficult decisions will have to be made regarding the cost of urgent works against the potential recovery of costs and the timeframe for doing so. After all, if the building requires urgent works it is not likely to attract many buyers should local authorities use their new powers of sale or lease.
 7. The WLGA welcome the new provision to give local planning authorities the power to issue a Temporary Stop Notice to prevent the continuation of unauthorised work on a listed building.
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Enhancing existing mechanisms for the sustainable management of the historic environment

8. This Bill places a statutory duty on local planning authorities to maintain a Historic Environment Record (HER). Currently this is a voluntary arrangement, discharged in most cases, to one of the four Wales Archaeological Trusts (WATs). The WLGA expect this arrangement to continue and are satisfied that the discharge of this function to the WATs is the most effective future arrangement. The Association also expects that existing funding arrangements to continue, in that Cadw will continue to grant aid the WATs and we are pleased that this is referenced in the Explanatory Memorandum Page 33 paragraph 161. Local planning authorities cannot accommodate any additional expenditure at the current time. A new statutory duty regarding HERs will require LPAs to ensure that the recognised standard of HER is achieved and a more formal service level agreement will be required between the LPA and WAT. The WLGA will comment on the guidance 'Managing Historic Environment Records in Wales' during the formal consultation period.
9. The Bill introduces Heritage Partnership Agreements to Wales. It is not expected that many HPAs will be put in place across Wales, however where they are requested they will take considerable time and resource to develop and agree. Local planning authorities do not have spare capacity to enter lengthy negotiations on HPAs and therefore there may indeed be future resource issues. Although these are voluntary agreements, it is not clear on what grounds LPAs can decline to be involved in a HPA and the repercussions of doing so.

Introducing greater transparency and accountability into decision taken on the historic environment

10. The WLGA welcome the duty on Welsh Ministers to inform owners of a decision to list and the necessary interim protection. The Association also welcome the ability of an owner or occupier to request a review of the decision to list.
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Any potential barriers to the implementations of the Bill's provisions and whether the Bill takes account of them

11. Over recent years the number of conservation staff in local authorities and national parks across Wales has declined; for example, a survey conducted in 2013 by the Wales Archaeological Trusts (WATs) found that there were forty-eight (FTE) conservation staff directly working for local authorities, with sixteen authorities having just one conservation/historic environment specialist. As this survey took into account external arrangements, such as fixed-term Heritage Townscape Initiative (HTI) grants and associated temporary officer posts, the Association now estimate that the number of (FTE) conservation staff stands at around forty-three, with two local authorities not employing any dedicated conservation officer/historic environment specialist.
 12. Although the Association recognises that LPAs have the desire and potential to play a more active role within the heritage sector, the Association does acknowledge that most LPAs can only concentrate on core statutory functions as a result of funding and capacity pressures, with many already struggling to fulfil current obligations. With the new Planning (Wales) Bill set to create an increased focus on performance and effectiveness of LPAs, in particular timeliness, many if not all LPAs will be forced to make difficult decisions regarding the prioritisation of work; this could hence result in a lack of resources directed towards the implementation of the new provisions in this Bill.
 13. Reasonable consideration also needs to be given towards differences and inconsistencies in capacity, resources and specialist staffing levels across LPAs, along with the potential implications such a variation will have on effectively and consistently delivering on the Bill's provisions across Wales.
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Unintended consequences of the Bill

14. No comment

Financial Implications of the Bill

15. As it stands the additional cost to local authorities as a result of the provisions in this Bill is minimal; this is welcome and the Association would not want to see this change as a result of amendments.

Appropriateness of the powers in the Bill

16. No comment.

For further information please contact:

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CLWYD-POWYS ARCHAEOLOGICAL TRUST
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22 May 2015

Committee Clerk
Communities, Equality, and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Sir/Madam

Consultation: Historic Environment (Wales) Bill

Thank you for the opportunity to provide evidence to the Committee on the Historic Environment (Wales) Bill. This letter is a preliminary response in outline, in advance of the Committee meeting on 10th June. A further and more detailed response will be submitted following that meeting.

1. Clwyd-Powys Archaeological Trust

- 1.1 The Clwyd-Powys Archaeological Trust (CPAT) is an educational charity which was established in 1975. Its objective is 'to advance the education of the public in archaeology', and it achieves this with the support of funding from a variety of sources, including Welsh Government. CPAT is one of four Welsh Archaeological Trusts (WATs) which work to help protect, record and interpret all aspects of the historic environment. This includes the provision of advice to local authorities on archaeology and planning, undertaking archaeological projects for private- and public-sector clients, and delivering a programme of community archaeology events and activities.
- 1.2 Governance of the Trust is through a Board of Trustees, which meets four times per year. Other activities of the Trust are advised by an Ethics Committee, an Investment Committee, and the Board of Directors of the CPAT HER Charitable Trust. As an independent Charitable Trust we submit publicly-accessible annual accounts to the Charities Commission, and as a limited company we file returns to Companies House. CPAT is a Registered Organisation with the Chartered Institute for Archaeologists.

2. Giving more effective protection to listed buildings and scheduled monuments

- 2.1 Overall the Bill will increase the effectiveness of the protection of designated heritage assets.
- 2.2 We particularly support the improvements in the Bill to the definition and protection of scheduled monuments. The expansion of the definition to comprise ‘any thing, or group of things, that evidences previous human activity’ is welcome, as are the introduction of enforcement and temporary stop notices for scheduled monuments and powers of entry for the archaeological investigation of scheduled monuments in imminent danger.
- 2.3 The Bill improves the situation with regard to the ‘defence of ignorance’ in the case of damage to scheduled monuments, but in our view there is still room for improvement in this area. In practical terms we are also concerned that there remains insufficient support in the Bill for Welsh Ministers to successfully prosecute cases where damage has occurred without consent, or where the conditions of scheduled monument consent have been breached.

3. Enhancing existing mechanisms for the sustainable management of the historic environment.

- 3.1 Overall the Bill will enhance mechanisms for the sustainable management of the historic environment.
- 3.2 We very much welcome the requirement for local authorities to create and maintain Historic Environment Records. The wording of the clauses in the Bill, and the nature of supplementary guidance, needs careful consideration to ensure that the coherence and consistency of the current arrangements is maintained across Wales. Further comments will be made on this subject after 10th June.
- 3.3 We also support the provisions for Heritage Partnership Agreements, and welcome the consistent approach in this area between scheduled monuments and listed buildings.
- 3.3 The creation of a statutory register for historic parks and gardens is also very welcome, although it is regrettable that similar provision has not been made for World Heritage Sites and registered historic landscapes.

4. Introducing greater transparency and accountability into decisions taken on the historic environment.

- 4.1 Overall the Bill does introduce greater transparency and accountability into decisions taken on the historic environment.
- 4.2 The creation of a Heritage Advisory Panel is a welcome step, but its relationship with the existing Historic Environment Group and other inter-departmental and inter-agency bodies and groupings does need careful consideration.
- 4.3 The general improvements to the consultation, review and designation processes to scheduled monuments and listed buildings are also to be welcomed. Approaches to both types of designated asset will be very similar; together with the relaxation of the conditions for applications for immunity these measures should streamline the system and remove inefficiencies. We also welcome the improvements to the dissemination of information in this area.

Yours sincerely

Paul Belford BSc MA FSA MCIfA
Director
Clwyd-Powys Archaeological Trust

Chloë Davies Deputy Clerk
Communities, Equality and Local Government Committee
Policy and Legislation Committee Service
National Assembly for Wales

22 May 2015

Dear Chloe Davies

Historic Environment (Wales) Bill – scrutiny by The Communities, Equality and Local Government Committee

Thank you for the invitation to provide evidence before the Committee on the 10th June. As requested this letter provides comments on the Bill's terms of reference. At this stage these are mostly general comments of principle rather than detail, on the assumption that detail will be elicited on the 10th of June and, if required, by a later written response.

The Dyfed Archaeological Trust is a non-profit making educational charity and a private limited company. The Trust was established in 1975 as part of network of four independent archaeological organisations covering the whole of Wales. The object for which the Trust is established (in its *Memorandum and Articles of Association*) is to advance the education of the public in archaeology. The Trust's mission statement is: Improving the understanding, conservation and promotion of the historic environment of Wales.

May we congratulate the Bill team in producing the Bill and supporting documentation, and in particular the concise yet comprehensive, easily understood Explanatory Memorandum. For ease of reference we refer to the headings and pagination in the Memorandum in our comments, rather than to the Bill itself.

Overall, the Bill is to be welcomed. It builds on existing legislation, taking into account several decades of experience and these, coupled with the consultative approach taken by the Bill team have ensured that potential barriers to implementation and any unintended consequences have been avoided.

Measures to introduce greater transparency and accountability -

We welcome the proposal to establish an Advisory Panel for the Welsh Historic Environment, and we are of the opinion that it should be made statutory. Our one comment is that consideration should be given to ensure there is no duplication of the remit of the Panel and the remit of HEG.

Consultation, interim protections and review for designations

Greater transparency in the designation process is long overdue, and the provision for interim protection is sensible.



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

This is also a long overdue proposal, and we support it. As noted in the Explanatory Memorandum fewer than 30 sites will be eligible for scheduling under this proposal, but these are potentially important sites, which will otherwise have no other form of protection.

Amendments to the criminal offences and defences relating to scheduling monuments

This amendment is welcomed, although we are disappointed that the defence of ignorance has not been completely removed. It is likely that damage cases will not be successfully prosecuted if the escape clause 'taken all reasonable steps' is included in the Bill.

Introduction of enforcement and temporary stop notices for scheduled monuments and Powers of entry for the archaeological investigation of an ancient monument in the imminent danger of damage or destruction

This two linked amendments are sensible extensions of existing legislation, and we fully support them.

Creation of a statutory register for historic parks and gardens

The creation of a statutory register is to be welcomed. As entry on the register will no longer be voluntary, we presume that a system of consultation, interim protection and review, similar to that proposed for scheduled ancient monuments and listed buildings, will be put in place.

We are disappointed that protection of Registered Landscapes and of World Heritage sites was not extended in the Bill.

Extension of the scope of urgent works to listed buildings and the recovery of costs

This is outside our area of expertise and we therefore offer no comment.

Introduction of temporary stop notices for listed buildings

This is a sensible amendment, but we ask why no provision has been made to give powers of entry to record a listed building in imminent danger of damage or destruction, similar to that proposed for scheduled ancient monuments.

Requirement for local planning authorities to create and maintain historic environment records

We fully support this proposal. We will provide a more detailed commentary on the proposal prior to the 19th June.

Introduction of heritage partnership agreements; Modifications to the scheduled monument consent process and Relaxation of the conditions for an application for a certificate of immunity from listing

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Cadeirydd/Chairman
Prof. B C Burnham

Cyfarwyddwr/Director
K Murphy BA MIFA



As with many of the other proposals in the Bill, these are sensible amendments, streamlining the system of consents and bringing savings, and we support them in principle.

Yours sincerely

K Murphy
Chief Executive Officer

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Cadeirydd/Chairman
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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol / Communities,
Equality and Local Government Committee
CELG(4)-16-15 Papur 4 / Paper 4



22nd May 2015

Committee Clerk
Communities, Equality, and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Sir/Madam

Consultation: Historic Environment (Wales) Bill

Thank you for the invitation to provide evidence to the Committee on 10 June. As you requested we have used the terms of reference set by the committee for our response. Our comments are set out to reflect the layout of the Explanatory Memorandum as issued on 1 May 2015, and our headings mirror those set out in the memorandum.

Gwynedd Archaeological Trust is one of four Welsh Archaeological Trusts which, together, provide a historic environment service throughout Wales. The Trust is a non-profit making educational charity and private limited company. It was established in 1975 with the object of advancing the education of the public in archaeology. The Trust has three primary strategic objectives: improving understanding of the historic environment; improving effective management and conservation of the historic environment; and raising awareness and appreciation of the historic environment. The Trust also recognises five strategic objectives for the development of the Trust: ethical management; human resource management; maintaining suitable internal management procedures; maintaining appropriate premises and equipment; and encouraging partnership working with other educational and heritage organisations and institutions.

Our comments follow.

Measures to introduce greater accountability and transparency

Establishment of an advisory panel for the Welsh historic environment

An advisory panel has the potential to provide Welsh Ministers with expert advice and an additional level of scrutiny of policy and strategy in relation to the historic environment of Wales. We are particularly pleased to see that the intention is to maintain a balance between the three core activity areas. The relationship between the advisory panel and the existing



Historic Environment Group (HEG) needs to be carefully defined to ensure they complement one another successfully.

Consultation, interim protection and review for designations

The proposals for consultation, supplemented by interim protection, should ensure greater transparency, and are to be welcomed.

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

The limitations to scheduling created by the monument definition in the 1979 Act have been recognised for some time, and we support the broadening of the definition.

Amendments to the criminal offences and defences relating to scheduled monuments

These amendments are to be broadly welcomed, however the proposed criteria still allow a degree of defence which may limit the occasions when a successful legal case can be made against offenders.

Introduction of enforcement and temporary stop notices for scheduled monuments

We support these additions to the existing legislation.

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

We support this addition to the existing legislation.

Creation of a statutory register for historic parks and gardens

We support the creation of a new statutory register for historic parks and gardens. Implementation of this provision will require resources to review the current register, and identify potential additions. There is no provision for the monitoring of sites other than through the planning process. The inclusion of registered parks and gardens in the monitoring process currently undertaken for scheduled ancient monuments would enable any structural changes to be recorded.

Introduction of temporary stop notices for listed buildings

We support this introduction, and it aligns the measures more closely with the proposals for scheduled ancient monuments, though this proposal lacks the addition of powers of entry to carry out archaeological investigation and recording, a proposal which would ensure appropriate records are made of buildings at risk before remedial works remove the evidence.

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

We fully support this proposal, though we note that additional resources will be required to allow the minimum of a full time HER archaeologist to manage the record.

Introduction of heritage partnership agreements

We support the proposed introduction of heritage partnership agreements.

Modifications to the scheduled monument consent process

We support these proposed modifications which should lead to a more streamlined process.

Relaxation of the conditions for an application for a certificate of immunity from listing

We support this proposed change, which, by allowing developers to apply for a COI prior to any planning application, should encourage improved investment in and sustainability of the historic environment.

Yours sincerely



Andrew Davidson
Chief Archaeologist

Ms C Davies
Deputy Clerk
Communities, Equality, and Local Government Committee
National Assembly for Wales
Cardiff Bay
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22 May 2015

Dear Ms Davies

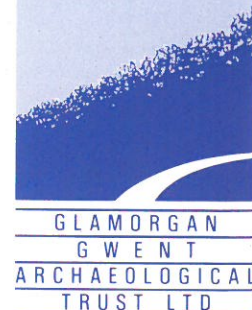
Consultation: Historic Environment (Wales) Bill

1. Preamble

- 1.1 Thank-you for your invitation to give evidence to the Committee.
- 1.2 As requested we have used the terms of reference set by the committee as a framework for our response. This is focused on the proposals concerning monuments and records rather than the built heritage and whether the proposals will achieve the stated aims.
- 1.3 We have also provided a short summary description of our organisation purpose and key functions. We have previously been invited to contribute to, and have responded to, a number of stakeholder soundings during the preparation of the Bill and associated draft Statutory Guidance and draft new or revised advice notices and documents.

2. The Glamorgan-Gwent Archaeological Trust (www.ggat.org.uk)

- 2.1 We are one of four Welsh Archaeological Trusts working closely with other national, regional and local bodies, to help protect, record and interpret all aspects of the historic environment, and make the results available to the public.
- 2.2 Our stated object is to advance the education of the public in archaeology and our primary focus is within South Wales. In delivering our object our current Forward Strategy is founded on five key strategic objectives: Fostering Public Understanding; Improving Access and Engagement; Discovery and Research; Developing the Trust; Archive Care and Deposition.
- 2.3 We maintain the regional Historic Environment Record, and are retained by Unitary Authorities and other organisations to provide strategic advice, and also case management support where development proposals, agri-environmental, forestry and woodland schemes impact on the historic environment. We also carry out a wide variety of archaeological projects for public and private sector bodies, including environmental impact assessment, field survey, excavation and heritage interpretation. The Historic Environment Record, which has been developed over many years by the Trust, is a key charitable asset. The GGAT HER Charitable Trust holds and owns the record.
- 2.4 The Trust promotes knowledge and learning about the Historic Environment through digital outputs, publications, displays, leaflets,



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lectures and talks and enables active engagement through voluntary participation in projects.

3. Will the legislation give more effective protection to listed buildings and scheduled monuments?

3.1 We consider that in broad terms the provisions within the Bill will improve the protection of listed buildings and scheduled monuments.

3.2 We particularly welcome the measures to extend the definition of a Scheduled Ancient Monument, to weaken the 'defence of ignorance', to introduce enforcement and stop notices, and to enable archaeological investigation of an ancient monument in imminent danger of destruction.

3.3 These proposed measures further underpin protection of Wales's archaeological heritage and are consistent with widely held principles. They address a number of shortfalls in the existing legislative provision applicable to Wales.

3.4 The first three, and in most instances the last, should not be difficult or costly to implement. With regard to that potential exception, the Memorandum (Clause 102) notes the particular difficulties caused by Climate Change impacts. Potentially these can be very severe, particularly for sites on the coastline, and although the imminence of danger of destruction is difficult to predict, it has and will continue to occur. In some circumstances the costs of investigation and recording could be significant.

3.5 We particularly note that in the past there has been an apparent reluctance by officials to pursue enforcement of conditions attached to Scheduled Ancient Monument consents (Memorandum Clauses 79, 81, 82), as there was a lack of powers short of taking action through the courts. We note the Memorandum is clear that the provisions of the Bill will allow enforcement of conditions (Memorandum Clause 84, 91, 94), however, we are unsure whether the related clauses in the Bill have sufficient clarity.

4. Will the legislation enhance existing mechanisms for the sustainable management of the historic environment?

4.1 We welcome the provisions in the Bill for local planning authorities to create and maintain Historic Environment Records, to allow Heritage Partnership Agreements, and to streamline the Scheduled Ancient Monument consent process.

4.2 The description of the contents of a Historic Environment Record in the Bill is one that would meet expectations to ensure informed decision-making at local level. Clause 33 (2) 8h) of the Bill has sufficient flexibility to ensure that tangible historic environment remains that do not satisfy criteria to justify national protection are identified. This particular issue will need careful consideration in the proposed Statutory Guidance.

4.3 Whilst we would agree that there should be a need for regulations as envisaged at Clause 33 (9) of the Bill, care needs to be taken that there are not any unintended consequences. We see this provision as designed primarily to allow potential for expansion, for example were it to be

deemed appropriate to require the inclusion of culturally significant sites or intangible heritage. We would prefer to see it expressed in such a way that it could not allow for the removal of the contents established by the passing of the Bill.

- 4.4 We support the principle that Historic Environment Records should be afforded protection to ensure information on the whole historic environment is accessible and used for informed and sustainable decision-making and that the record should be publically accessible. In respect of Publication it may be appropriate in some circumstances and particularly where large datasets are requested for a local planning authority only to issue the data under particular controls (e.g. a licence). Do the powers to do this need to be articulated in the Bill or in the proposed Guidance?
- 4.5 We agree that the Bill should contain provisions to allow one or more authorities to discharge the functions through another *person*, and the need for Welsh Ministers to approve this. We note that a regional approach to the management of Historic Environment Records has particular strengths. Currently 11 of the 12 local planning authorities in South Wales have adopted (for the purposes of the General Development Order) the Historic Environment Record that we maintain and all use it, notably for development control purposes. If it were to be the case that any or all of these authorities were to take up the option to discharge the duty via ourselves we do not see that there are any practical difficulties that would be insuperable. However, we note that this record, now held in a separate Trust that we created and managed, was developed under our powers to support the delivery of our object. It is a key charitable asset that needs to be available to us to support our delivery to both present and future beneficiaries. Whilst we do not want to make any comment on the draft guidance for Historic Environment Records at this time, the Guidance will need to take care in how it addresses the issue of the future protection of such records and particularly of rights (including intellectual property rights) during any transfers of responsibility.
- 4.6 With regard to costs for management and maintenance of our Historic Environment Record we note that currently we have good support from the local authorities to whom we provide planning control support. The grants from each authority are small but together match the current provision for our region from Cadw (Memorandum Clause 460). We also note that the recovery fees for commercial access that we charge are far higher than the figure identified in the Memorandum (Clause 461 and repeated at 470), but that our charges are comparable to those made by local authorities who manage their own Historic Environment Records. We note and welcome the proposal (at Memorandum Clause 468) to increase the Welsh Government support for Historic Environment Records to ensure one full time staff member; in our case it would be detrimental if this was at the expense of the existing local authority support. This and some specific project work has allowed us to have two full time staff equivalents. We need to be able to maintain the higher level of resource to ensure that we could deliver the required service in an area which has a

significant concentration of population and development activity when compared to other regions in the Principality.

4.7 The provisions for Heritage Partnership Agreements is a forward looking measure which should allow both more cost-effective and perhaps more importantly better integrated management of holdings containing one or more heritage assets or individual heritage assets with multiple designations. The Bill would seem to contain ample provisions. Good articulation in regulation of the operational requirements and effective implementation should enable positive and sustainable outcomes.

4.8 The improvements to enforcement notices and temporary stop notices will allow better protection of significant historic assets at risk.

5. Will the legislation introduce greater transparency and accountability into decisions taken on the historic environment?

5.1 The modernising of the consultation process for both Listed Buildings and Scheduled Ancient Monuments, including the method that decisions are communicated, and the incorporation of clearer and more transparent review mechanisms should improve transparency.

5.2 We understand that the establishment of an Advisory Panel for the Welsh Historic Environment is designed to allow expert advice on the formulation, development, resourcing and delivery of historic environment policy and strategy in delivering the core areas of knowledge, conservation, and public engagement and it will have a broad remit in the provision of this advice. We welcome the intention that appointments will be made on Nolan Principles and the Code of Practice for Ministerial Appointments to Public Bodies, we would expect that the size of the panel will be sufficient to include expertise on the diverse components that form the Historic Environment and also have the competence to challenge delivery perspectives.

Yours faithfully



AG Marvell FSA MCifA

Chief Executive

For and on behalf of the

Glamorgan-Gwent Archaeological Trust Ltd

Agenda Item 4

10 June 2015 – Papers to note cover sheet

Paper No:	Issue	From	Action Point
Public papers to note			
6	Historic Environment (Wales) Bill	Chair of the Finance Committee	Financial implications of the Historic Environment (Wales) Bill
7	Renting Homes (Wales) Bill	Residential Landlords Association	Additional information following the meeting on 14 may 2015

Christine Chapman AM
Chair
Communities, Equality and Local Government
Committee
National Assembly for Wales

3 June 2015

Dear Chris

Financial Scrutiny of the Historic Environment (Wales) Bill

As you will be aware the Committee considered the financial implications of this Bill at our meeting on 21 May. We have decided not to undertake any further scrutiny of this Bill but thought it may be helpful to outline some of the financial considerations of the Bill for your Committees consideration whilst you undertake your scrutiny of the Bill.

Costs to local authorities

One of the Committee's main concerns relates to the impact this Bill will have on local authorities. Members were conscious that local government is currently preparing for substantial change in preparation for the Local Government (Wales) Bill, in addition local government has been subject to significant budget cuts over recent years.

We note that consultees to the Welsh Governments own [consultation Future of Our Past consultation in 2013](#) raised similar concerns that local authorities are already at capacity coping with their current core duties, and are faced with greater social, educational and job creation priorities.

It was also noted in the responses to the 2013 consultation that adequate financial provision needs to be made to provide local authorities and other interested bodies with the means to implement the Bill. Pembrokeshire County Council stated in their consultation response that:



PCC has concerns that a significant additional burden of delivery will fall to the Local Planning Authority, at a time of increasingly constrained budgets. Whilst streamlining mechanisms will introduce some efficiency savings, PCC has concerns that, overall, the financial implications to LPAs could be significant, but remain unquantified.

The RIA states that additional costs falling upon local authorities as a result of the Bill are very limited, at just under £40,000 between 2016–17 and 2020–21. However, the RIA has not calculated costs to local authorities resulting from parts of the Bill such as Heritage Partnership Agreements (HPAs) and extending the scope of urgent works to listed buildings. While any additional costs could be outweighed by the benefits of these policies, it has been argued by some stakeholders that there may be substantial start-up costs, particularly for HPAs.

Therefore, your Committee may wish to scrutinise the accuracy of the RIA's assertion that the additional costs to be imposed on local authorities are very limited.

The need for a Bill

In addition consultees said that problems with the current management of Welsh heritage were down to a shortage of funding rather than necessarily problems with the law. The National Trust stated in response to the Welsh Government's 2013 consultation that:

There was a general feeling that the existing arrangements do not work to their full potential where they are not properly resourced. The existing system would deliver greater real benefits if this resource was in place alongside good management, supplemented with good technical advice on the ground.

In this context, your Committee may wish to ask whether:

- a properly funded historic environment sector could potentially address issues facing the sector better than the Bill**
- the Bill may assist the sector to deliver more within existing resources.**

Heritage Partnership Agreements

An issue raised during the 2013 consultation by a number of local authorities and the Royal Commission on the Ancient Historical Monuments of Wales (RCAHMW) was the substantial start-up costs falling upon local authorities that are



associated with HPAs. HPAs are voluntary statutory agreements between owners and consenting authorities (such as local authorities and Cadw) to plan for the long-term management of historic assets by reducing the need for individual consent applications for planned changes to the asset.

No figure is provided for costs associated with these in the RIA, although a table showing the impact of 8 HPAs in England is provided. The range of costs for an individual HPA was between £4,000 and £70,000 in these case studies. In relation to the potential costs of HPAs, page 90 of the RIA notes that:

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.

Overall, however, the costs to local authorities of HPAs increased in the English case studies, while owners and English Heritage saw savings. However, in their response to the 2013 consultation, the RCAMHW expressed support in principle for HPAs, but noted that in practice:

In most situations it is not practical to prepare proposals far in advance and the up-front investment of time and resources needed for an HPA will not be repaid by the benefits of the agreement. This is therefore likely to be a proposal of negligible value in practice.

Given the voluntary status of HPAs, your Committee may find it useful to understand the level of indicative costs and savings to local authorities and other stakeholders that may arise should they be introduced.

I hope this information is helpful to your Committee's considerations and I look forward to the Bill's Stage 1 Plenary debate.

Yours sincerely,



Jocelyn Davies AM
Chair

cc Deputy Minister for Culture, Sport and Tourism





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Christine Chapman AM, Chair
Communities, Equality and Local Government Committee,
National Assembly for Wales,
Cardiff Bay Cardiff,
CF99 1NA,

27th May 2015

Dear Christine,

Please find below the further information requested by the committee and our response to the written questions the committee requested. If we can be of any further assistance please advise.

Yours Sincerely,

Douglas Haig

Vice-Chair and Director for Wales, Residential Landlords Association

Requested further information:

Enforcement

The RLA strongly believes that the best way to improve the Private Rented Sector (PRS) is to have better enforcement, rather than establishing more legislation. At

present there are over 100 pieces of legislation and over 400 individual regulations governing the PRS. These regulations cover each and every landlord in the PRS and do not apply, nor should they, on an individual basis.

Many of the problems associated with the PRS occur with criminal landlords, who exploit current regulations to the detriment of tenants. Criminal landlords are not criminals because they do not know or understand the law, they are criminals because they choose not to follow it, knowing that the rules won't be enforced on them. No amount of extra legislation will change this fact, only enforcement of the rules and regulations that every other landlord strives to uphold.

Increasing the levels of regulation will not bring criminal landlords up to standard. Instead it will simply demotivate those landlords who have always strived to do things 'by the book', who now find this book getting ever heavier with the further pages of regulation.

Many of the areas that the Renting Homes (Wales) Bill seeks to improve or alter are already covered by some form of legislation. For example, both retaliatory eviction and fitness for human habitation are already addressed by existing legislation, consumer rights and the Housing Health and Safety Rating System respectively. Had these regulation been properly enforced we may not see the need for these new regulations. Furthermore is it reasonable to expect these new regulations to succeed where previous regulations have failed, considering that they may be no better enforced?

Recent research conducted by the Local Government Information Unit and Management Journal, has also found that 54% of local authorities believe that they are in danger of being unable to fund their statutory services which include Environmental Health Services. Furthermore in 2013, the House of Commons Communities and Local Government Select Committee report on the private rented sector warned that it was *"concerned about reports of reductions in staff who have responsibility for enforcement and tenancy relations and who have an important role in making approaches to raising standards successful."* The same report also raised concerns that *"the police are sometimes unaware of their responsibilities in dealing with reports of illegal eviction"*.

Enforcement is the key to making sure that the provisions in the Renting Homes Bill clear out the criminal landlords who actively avoid complying with the regulations. However, good enforcement and responsible governance should not seek to punish those landlords who, in an honest and open way attempt to comply with a plethora of regulations, make a mistake.

Rent increases and rent control

The imposition of rent controls in Wales is entirely unjustified, especially when PRS housing in Wales is needed to expand to meet the increasing demand.

In a survey to over 1,000 RLA members, over 75% of landlords either froze or cut their rents in 2014 and over 65% intend to do so again. Furthermore three out of five

landlords said they would leave, or consider leaving the PRS if rent controls were introduced¹. This would have a dramatic impact on the availability and standard of PRS accommodation in Wales, untimely offering tenants less choice and poorer standards.

The Residential Landlords Association (RLA) is deeply concerned that such a policy would leave many tenants worse off and would stifle investment in new rented homes at just the time that more is needed to boost supply and increase the housing options and choices available to tenants. I am therefore writing to all parties represented in the Assembly to seek assurances that this is not a policy that would be pursued in Wales.

As figures from the Office for National Statistics (ONS) show (see table below), average rents across Wales have actually fallen in real terms over the last 5 years.

	12 months to March 2014	5 yrs March 2009 - 2014
% rent increase across Wales	0.6%	3%
RPI over the period	2.5%	20.6%
CPI over the period	1.7%	16.3%

Source: Index of Private Housing Rental Prices (ONS, Published 25th April 2014)

More recent figures also support this trend in falling rents. The most recent index of private sector rents show that in Wales, rents increased by just 0.8% in the 12 months to March 2015. Over the same period, inflation as measured by RPI was 0.9%.

Research published in 2011 by the OECD has shown that rent controls lead to greatly reduced quality and quantity of new homes. It concludes: “an illustrative correlation shows that across countries, stricter rent control tends to be associated with lower quantity and quality of rental housing, as measured by the share of tenants who lack space and who have a leaking roof.” Likewise, the last time that rent controls were in place in the UK it led to the proportion of privately owned rental properties falling from 53% in 1950 to 8% in 1986.

As nearly 90% of landlords are individuals with only one or two properties who rent them out to supplement their income, this is hardly an industry where a few companies are profiteering at the expense of their customers.

More recent research published in 2015 by the OECD has again come out against rent controls. It is contained on page 48 of its annual Economic Policy Reforms document, “Going for Growth”².

“Excessive rent regulations result in under-developed rental markets (e.g Sweden). This hinders labour mobility and reallocation, reducing in turn matching between workers and jobs. The consequence is lower productivity and higher unemployment.”

¹ http://news.rla.org.uk/wp-content/uploads/Member-Survey2014_Data_All_150202.pdf

² http://www.keepeek.com/Digital-Asset-Management/oced/economics/economic-policy-reforms-2015_growth-2015-en#page49

Furthermore, in February the Minister for Communities and Tackling Poverty, Lesley Griffiths AM said:

"In relation to rent controls, I do recognise that rent control can look attractive initially, but I think previous experience shows that rent controls reduce the incentive for landlords to invest and can then lead to a reduction in quality housing... Again, I think that could give possible unintended consequences to the supply of private rented properties."

Clearly, given all the evidence above, rent controls are unjustified for the PRS in Wales as in reality rents have been falling, even throughout the financial crisis. Secondly rent controls would have a dramatic impact on the standard and quality of PRS homes in Wales, as tenant choice reduces along with supply, and those landlords who remain lose the incentive to continue investing in property. The impact that rent controls would have on the Welsh PRS would be catastrophic, crippling a sector and stunting economic growth across Wales.

Written Questions

Q1) whether the proposals for landlord's notice are an improvement on the current arrangements for Section 21 notices?

The new provisions for a landlord's notice (section 172) keeps with it the same principle as the previous Section 21 notices in the Housing Act of 1988, that of the "no fault eviction". It is important that this tool is retained in the Renting Homes (Wales) Bill as the Section 21 / 172 notices are often the landlord's last line of defence, after all other measures have failed.

We are pleased to see the removal of S21(4a) which states that

"That the landlord, or in the case of joint landlords at least one of them, has given to the tenant a notice in writing stating that after a date specified in the notice being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling house is required by virtue of this section"

This section had previously implied that the date specified in the landlords notice must be the last day of the period of the tenancy and not earlier than two months after the date the notice was given. However, in the case of *Spencer Vs Taylor* 2013 the Court of Appeal decided that where an AST had a fixed term followed by a periodic contract, there is no need to use a S.21(4)(a) as a S.21(1)(b) would suffice. This decision was largely taken because of the wording in S.21(2) which stated that

"A notice under paragraph (b) of sub-section (1) above may be given before or on the day on which the tenancy comes to an end and that sub-section shall have effect notwithstanding that on the coming to an end of the fixed term tenancy a statutory periodic tenancy arises"

The Court of Appeals determined that the use of the word "may" in S21(2) is permissive rather than restrictive.

Our reading of the Renting Homes (Wales) Bill keeps what was established in the case of *Spencer Vs Taylor*, as there is no part of the bill which would raise the same implications as S.21(4)a and S.21(2). Therefore under this Bill the date specified in a landlord's notice need not be the last day of the period of the tenancy, however it must still not be earlier than two months after the date the notice was given.

This change is a large improvement on the previous Section 21 notices, as it keeps the same principle without landlords needing innate knowledge of case law. The process for issuing a landlord's notice is relatively clear.

Our one concern regarding the landlord's notice, as prescribed in the Renting Homes (Wales) Bill, is that at present we see no provision for issuing a landlord's notice electronically. This would benefit both landlords and tenants, as it would be clear exactly when the notice was issued and if that notice had been properly received and understood. We do however acknowledge that in some parts of Wales, or for certain demographics, this may not be an option. We would ask for the ability, where agreed with the tenant in the contract and geographically suitable, for all notices to be issued electronically.

Q2) whether you have any concerns that proceedings for possession will have to be issued within two months of the notice expiring?

At present a S21 notice is a tool used by landlords for more than simply claiming possession back on a rented property. Often if a tenant is building up rent arrears, communication between tenant and landlord can be difficult to establish. This could be for a number of reasons, however a S21 notice is sometimes used to establish a dialogue with the tenant around the issues they may be facing. In cases where a S21 notice does re-establish communication with the tenant, often the landlord and tenant can work out a payment plan to resolve the outstanding rent arrears and assess future rents. This process helps to keep the tenant in the property and encourages the landlord and the tenant to work together to maintain a successful tenancy.

Where this occurs, a landlord would need time to ensure that the tenant is able to meet this new payment plan. Under the new requirements, that a notice would expire after two months, the landlord would not be able to ensure that the tenant can meet the new plan. This is because, assuming rents are paid monthly, the tenant would only need to meet this new plan once, before the notice expires. At which point the landlord would then need to seek another possession order, taking a minimum of 2 months.

Although we understand that a landlord's notice must expire, we would ask that this time be extended from two to six months. This would allow for the mechanism (as mentioned above) to remain in place and give tenants the chance to prove they can meet new payment plans. It would also give landlords reassurance and the confidence to offer tenants these second chances.

Q3) the Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. How big a problem is abandonment for private landlords and how so they currently deal with it?

Abandonment procedure is, at present, one of the most difficult situations a landlord can find themselves in, lease not because of the penalties if they get things wrong. The first sign given to a landlord that a property has been abandoned is the build up of rent arrears and no communication from the tenant. Typically a landlord would wait up to two months of no rent before escalating any procedures, as a tenant may have a valid reason for missing a month and the lack of communication. Upon two months outstanding arrears and still without communication from the tenant, a landlord may, following correct procedure, visit the property upon which they discover it has been abandoned. Often signs would include the full removal of the tenant's belongings, a build up of post, electrics and gas turned off, or the worst case scenario where a property may be completely ruined. At this point the landlord would formally suspect abandonment and begin following the formal procedure as well as enquiring with neighbours and contacts as to the whereabouts of the tenant. In this process it could be 3 or 4 months before the landlord begins formal abandonment proceedings.

The current formal procedure for abandonment is at best unclear and at worst misleading. The new proposals do simplify abandonment procedure, however we would still ask that the Welsh Government produce very strong guidance (almost a tick-box exercise) that a landlord can follow, to avoid any unnecessary court visits.

Thankfully abandonment does not make up a huge percentage of overall tenancies, however it does make up a large percentage of those tenancies that end in rent arrears. Presumably this is because tenants believe they can avoid any debts or arrears by simply abandoning the property. At present very little exists to protect landlords from these types of abandonment cases; often they find themselves struggling to follow formal abandonment procedure, as well as recovering a large loss of earnings, which for some smaller landlord can be fatal.

Q5) what risks do the abandonment proposals in the Bill present to private landlords?

The problems lie with Section 218(2)(b) in particular in that the contract holder can claim that he/she has not abandoned the dwelling and there has been good reason for his/her failure to respond or respond adequately. This is beyond the control of the landlord and these circumstances will be unknown to the landlord at the time. We would ask for further guidance as to what "good reason" would mean in practice, so that a landlord may not be caught out. We would also stress that a tenants should have the responsibility to inform the landlord when they are away for a prolonged period of time. To avoid the risk of unnecessary court visits we would ask for strong guidance as to what "good reason" would actually constitute so that a landlord may be absolutely clear in what is expected.

Secondly section 218(2)(c) says that a tenant, before the end of the period or within six months, apply to the court on the grounds that the landlord did not have reasonable grounds for being satisfied of abandonment. Landlords do not actively seek out to declare abandonment on rented properties and many would, through fear, look for every sign and indication that a tenant may be intending to return. However what may be deemed reasonable by the court may have simply slipped through the mind of the landlord, and thus they then incur the following penalties. To avoid this situation we

would ask the very strong guidance be produced on exactly what a landlord would need to do in order to satisfy this requirement of “reasonable grounds”. We would also argue that where a landlord has done everything they possibly could to establish will all certainty that a property has been abandoned, and a tenant returns six months later, the landlord should not be held entirely responsible for following the letter of the law. Instead the onus of responsibility should fall on the tenant, who throughout all of this procedure, has failed to establish any type of contact with the landlord. Although perhaps this point may be somewhat sensitive, we would ask what limitations, conditions and cost a landlord may be expected to comply with in re-housing in this circumstance.

Q6) Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring that vulnerable people are not exploited?

We consider that at the very least paragraph (b) ought to be removed and that the question as to the reasonable grounds on the part of the landlord should explicitly be judged at the time and in the light of the information reasonably available to the landlord. The power to reinstate should be subject to availability of accommodation.

Q7) finally, you will have noticed that the Bill used the county court (or High court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether some disputes (other than possession claims) would be better dealt with by the Residential property tribunal rather than the courts?

As the Renting Homes Bill has been considered by the Welsh Assembly there have been suggestions that the jurisdiction in residential landlord and tenant disputes should be transferred to the Residential Property Tribunal away from the County Courts. In principle, the Residential Landlords Association (RLA) has not objected to suggestions that Residential Property Tribunals should assume at least some jurisdiction over these cases. We have, however, been very concerned about the practicalities. We have supported the transfer of contested disrepair cases but consider that the Council Courts have the necessary infrastructure in place to deal with the majority of cases. We believe that this approach coupled with the transfer of defended disrepair claims to the RPT, is the better solution. The ticketing of Judges already takes place in family cases. As residential landlord and tenant law is complex you certainly need judges with the requisite knowledge and experience.

The essential problem at the moment is that most District Judges have a very extensive workload, including debt collection, personal injury claims, contract disputes and a very heavy workload of family related matters. Over time District Judges have been given much more jurisdiction to deal with cases than they have had in the past and they also have to undertaken extensive case management responsibilities even for those claims that are ultimately dealt with by Circuit Judges or High Court Judges. Greater specialism would therefore be the way forward in our view.

“The status of the Tribunal”

Unlike in England, the RPT is a stand alone Tribunal. In England RPTs have been assimilated into the Courts and Tribunal Service. This has led to the provision of additional back up resources, such as use of Tribunal rooms for hearings, which is not necessarily always available in Wales.

Practicalities

Our major concern has been that RPTs do not have the necessary resources, structures or, indeed, experience. Despite their shortcomings, at least, there is an extant Court system throughout Wales. It is geared up in many respects to deal with the volume of claims relating to residential landlord and tenant matters, many of which are undefended or at least even if they are defended matters can be disposed of more easily. The Tribunals most certainly could not take on this volume of work. Currently the RPT is being expanded to deal with work under the Housing (Wales) Act and a further substantial transfer of jurisdiction would, we believe, overwhelm the Tribunal.

The importance of speedy resolution of claims

Of paramount importance to landlords is to ensure that claims, especially straight forward claims are dealt with expeditiously. Whilst we have concerns at times about delay, at the moment the Courts do have the basic structures in place to enable, at least undefended claims, to pass through the system relatively quickly. Tribunal members are often part time and they simply do not have the resources to take over this work load. With the current climate affecting public expenditure, it is unrealistic to think that this is a priority to which resources could be devoted.

Claims in the County Court

Claims in the County Court relating to residential landlord and tenant matters can be broken down into three broad categories. Firstly, there are those that are undefended altogether; where frequently the defendant/tenant does not even turn up let alone enter into any kind of response. Secondly, you have cases which, in reality, are to all intents and purposes undefended but where issues may arise, e.g. an application for an extension of time to allow payment of arrears by instalments or to defer possession. There may be arguments about the amount of arrears or other matters that can be disposed of quite speedily. Often it turns out that there is no substance in these so called defences anyway.

Thirdly, you have the more serious matter where is it genuinely defended, e.g. disrepair or claims of harassment. Claims relating to retaliatory eviction will come into this category where they are defended as well.

The normal process is for any claim which is defended, at least where there is substance to the defence, to be “tracked” by a District Judge. The main exception is possession claims which are automatically listed for hearing although they can be subsequently tracked, e.g. if there was a disputed defence over disrepair, seeking to set off damage for disrepair against rent arrears. An additional option could be given

in suitable cases which are defended for the determination by the Tribunal. A precedent already exists for this when the Tribunal is exercising its function as leasehold valuation tribunal. Service charges can and are normally referred to a Tribunal for determination.

Expertise of a Tribunal

The Tribunal can be expected to have particular expertise in relation to property condition based on its existing jurisdiction. Beyond that, however, issues such as harassment, anti social behaviour, or breach of contract terms, are essentially often issues of fact where they are defended. These can be dealt with just as well in a Court and indeed, arguably are more suited for Court where cross examination to ascertain the truth is very important.

The role of experts

One argument that has been advanced as to why it would not be appropriate to transfer cases to the Tribunal is in relation to expert witnesses. Expert evidence is particularly relevant in the case of disrepair cases but if anything a reference to the Tribunal would be advantageous because there is a specialist member, the surveyor member, who may be better placed to weigh up the evidence given by experts. It is acknowledged that legal aid may not be available but that is going to apply equally in the Court system in many cases unless it can be said that the tenant's home is at risk as a result of the proceedings. Indeed, there may be further legal aid cut backs which will further circumscribe the availability of legal aid in any case.

Costs

There is a no cost jurisdiction in the Tribunal. Arguably, this can encourage litigation in certain instances because the lack of sanction of costs for wrongly pursuing a case may ironically mean that there are likely to be more litigation before the Tribunal, if the RPT were to assume jurisdiction. There is, of course, power for the Tribunal to order costs if a party acts unreasonably, which if judiciously used might well prevent actual misuse of the Tribunal process, but it is unusual for this jurisdiction to be exercised, especially in relation to unreasonably bringing of defending proceedings. In any case, where matters are dealt with on the small claims track the rules mean that costs orders are rarely made, beyond the specified matters such as fees and expert evidence, as well as the cost of witnesses attending.

Conclusion

As indicated at the outset, whilst the RLA is not wedded to the idea of cases being dealt with in Court, as opposed to a Tribunal, we still believe that there are many practical reasons why the bulk of cases should remain in the Court system. This is particularly true of those cases which can be dealt with usually summarily because they are undefended with no substantial defences raised. We do, however, accept that where an issue arises regarding property condition and the case is defended then a reference of the issue to the Tribunal could be advantageous because of its specialist nature.

Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

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