

HE 27

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Communities, Equality and Local Government Committee

Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill

Ymateb gan: Cyfoeth Naturiol Cymru

Response from: Natural Resources Wales

1. The purpose of Natural Resources Wales (NRW) is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used. In this context sustainably means with a view to benefiting, and in a manner designed to benefit, the people, environment and economy of Wales now and in the future.
2. NRW has a historic environment interest and role to play in strategic policy and planning and the delivery of area-based Natural Resource Management Plans integrating the historic environment. We work in partnership in relation to the Register of Historic Landscapes and lead on the LANDMAP Historic Landscape assessment and monitoring programme. We have a role in heritage management associated with woodland operations, felling licences and other forestry regulatory matters as well as ensuring the protection, conservation and management of historic assets on the NRW estate. We identify the potential impact of National Habitat Creation, habitat restoration and SSSI consents and assents on historic assets. The historic environment is taken into account in our flood risk management operational work, projects and strategies, management of Marine Conservation Zones and in relation to Shoreline Management Plans and consultations connected with the Countryside and Rights of Way Act 2000. Our wide ranging historic environment role will be closely linked and delivered through the ecosystem services approach, as part of the cultural services aspect, which is core to NRW's principles and methods for working.
3. We welcome the opportunity to present to the Committee our general support for the Bill, whilst also raising some areas for further consideration and clarification. We have responded under the Committees' Terms of Reference headings.
4. Whilst the Bill as a whole is of interest, there are specific measures, policy and guidance documents that are particularly relevant to the roles and responsibilities of NRW, our response focuses on these particular elements. In addition to responding on the legislation we have also given some early feedback on the policy documents and selected draft guidance.

General principles of the Bill

5. NRW has been involved in the External Reference Group to the Bill and are encouraged by the overall purpose and intended effect of the legislation. We are very supportive of the general principles and intent of the Historic Environment (Wales) Bill, welcoming legislation that further strengthens the protection and sustainable management of the Welsh historic environment. Guidance will be key to the delivery of the Measures and intentions set out in the Bill and needs to clearly articulate what is required to be compliant. We therefore welcome the planning policy, statutory guidance and best practice guidance published to accompany the Bill.

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6. The Bills Explanatory Memorandum, Planning Advice, Guidance and Best Practice should help explain how the sustainable management of the historic environment will support the delivery of the seven Goals of the Well-being of Future Generations (Wales) Act 2015, in particular the 'Wales of vibrant culture and thriving Welsh Language' Goal, which relates to heritage. We do not feel that this is sufficiently evident at this stage, this could be strengthened to make the connections clearer.
7. The Explanatory Memorandum's purpose and intended effects section (S3, page 8) recognises the historic environment's role in defining the historic landscape, national culture, identity and distinctiveness. Whilst the Bill provides for the protection of key elements that define this, it is important that this is fully captured and translated into Best Practice Guidance to facilitate and encourage sustainable management. We believe the guidance could better reflect the contribution of the historic environment to a sustainable Wales and to the interrelationship with other Bills, notably the Natural Resource Management approach as set out in the Environment (Wales) Bill. The Natural Resource Management approach will be effective in working towards the sustainable management of the historic environment. NRW would be pleased to work with Welsh Government and Cadw to help ensure that the requirements of all the Bills complement each other to deliver the shared outcomes.
8. The Explanatory Memorandum (section 10, page 8) identifies key pressures in 21st century Wales, yet does not recognise climate change as being one of the key pressures on the historic environment. We recommend that the profile of climate change and its potential effects on the historic environment is raised and reference made to the emerging Historic Environment Sectoral Adaptation Plans. In doing so this will help clarify the role of the Historic Environment (Wales) Bill in contributing to the climate change provisions of the Well Being of Future Generations (Wales) Act and the Environment (Wales) Act.
9. We believe that NRW is already well aligned to respond to the changes proposed in the Bill and we welcome guidance which will support our work. The principles are pragmatic and offer some real opportunities to assist NRW in the management of the historic environment when undertaking our functions.
10. We believe we have experience and expertise that would usefully inform the development of certain elements of the proposed policy and supporting guidance (for example historic landscapes) and would welcome an ongoing opportunity to contribute.

Measure: Immediate halt to unauthorised works to scheduled monuments, easier action against those who have damaged/destroyed monuments

11. NRW supports the measure to facilitate cessation of damaging works. Whilst co-operation with public bodies should be expected, the ability to stop third parties both on public and private land, will help to stop work continuing once it has been identified as a risk to scheduled monuments.
12. There are significant numbers of scheduled monuments on the NRW estate, for example there are 179 Scheduled Ancient Monuments on the Welsh Government Woodland Estate that we manage. All have management plans agreed with Cadw and they are included in our constraint mapping for the operational planning process. We welcome the Measure to bring an immediate halt to unauthorised works to scheduled monuments.

Measure: A statutory register of Wales' historic parks and gardens

13. NRW supports the proposed changes to the Register of Landscapes, Parks and Gardens (S18, page 22), making Part I of the Register of Parks and Gardens statutory. This will give due recognition and status to their special historic interest.
14. We believe that the arrangements for consultation on planning applications affecting Registered Parks and Gardens, and their settings, will be firmer and clearer. Having a statutory register that will ensure that all planning authorities, rather than some, consult Cadw and an amenity society on planning applications affecting Grade I and II*, is welcomed.
15. The facility to potentially include key buildings, water or land that is adjacent or contiguous is also welcomed. This will help raise awareness and protection of important settings, features and the local landscape of entries on the register, for maintenance, development management, informing the planning of new woodland and approving new planting schemes.
16. The facility to maintain the register is essential, we support the proposed modifications in 18 (1) (3) to add, remove or amend an entry and the criteria and transparency in the decision making process as set out in the purpose of the provisions in the Explanatory Memorandum page 25, paragraph 114.
17. A very positive improvement will be the publishing of the up-to-date register as set out in 18 (1) (6) to extend access beyond Welsh Government to owners, occupiers and other interested parties, as detailed in the Explanatory Memorandum page 25, paragraph 116. This will reduce the potential for overlooking areas on the register.
18. We agree with the effect of the intended provisions. It is unclear however, whether the new statutory status will then result in the Register entries appearing within the Land Registry, as raised in paragraph 110 on page 24.

Measure: Partnership agreements with consenting authorities

19. We support the proposal for wider use of Heritage Partnership Agreements. This would be useful to NRW when planning and designing capital projects and other areas of NRW work. It would be a positive development for ensuring historic environment management in the wider environment. This proposal should lead to efficiency savings, by reducing the number of consents for works where land managers have long term plans for their sites. The consents for the period of the plan could be agreed at the outset, rather than for each operation. For example, Sustainable Forest Management Plans with 5 year action plans, could identify works which can be agreed and consented for over the 5 years, removing the need for each operation to be consented. It would be useful to look at the potential connections and synergies that could be made between Heritage Partnership Agreements and the proposed land management agreements in the Environment Bill.
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22. We support the proposal that Partnership Agreements include the management of land associated with scheduled monuments. This provides an opportunity to deliver Natural Resource Management principles that serve both the historic and natural environments. For example linking in our forest resource plans and landscape scale management where agreements relate to more than one historic asset.
23. Whilst the Bill is intended to 'enhance existing mechanisms for the sustainable management of the historic environment', we are disappointed to see that this measure seems to relate only to Heritage Partnership Agreements for scheduled monuments and adjoining land. Historic Landscapes, Parks & Gardens, Battlefields and Historic Environment Record entries are not addressed, which we believe is a missed opportunity. We believe that amendments to the Partnerships Agreements would maximise delivery of this intent if they related to the whole historic environment.

Measure: Requirement to create and maintain Historic Environment Records (HER)

24. NRW recognises the importance of these records and makes frequent use of the HER. We support the proposals to make sure this is readily and consistently available and safeguarded for the future. The proposal for planning authorities to take 'ownership' of the HERS seems sensible as long as funding is in place for a fully qualified person, or process, to do this. A single source for the HER may be beneficial in determining historic assets for a particular location for development management and land management purposes. The wording of 33 (2) (f) on page 43 could be clearer.
25. The creation of a non-statutory category of 'historic assets of special local interest', could result in disagreement between the planning authority and land manager or developer. The local authority has to consider entries whilst the developer may argue that an entry is non-statutory, thus increasing expense for both parties in determining plans. We would support the creation of such a category but it must be supported by guidance to ensure criteria are applied consistently and clarity is given on relative material weight in the planning process, including any processes for consultation and consensus.

Measure: Formal consultation with owners for the designation of nationally important historic assets

26. NRW welcomes the opportunity afforded to land managers and interested parties to comment on potential designations. It is important for those affected to understand the implications of designations on their land and to discuss area boundaries. The measures to protect a site until designation is confirmed, are sensible.

Measure: Independent panel to advise on historic environment policy and strategy

27. We support the establishment of an independent Advisory Panel for the Welsh Historic Environment unconstrained by organisational remits, impartiality or political constraints. As stated in the Explanatory Memorandum page 12 paragraph 28 ‘new and stimulating perspectives... are needed’, we would recommend that the Panel members are not confined to the historic environment sector but also draw upon other disciplines and represent a range of professional, academic and technical expertise both from within Wales and potentially Europe.
28. From NRW’s perspective we would encourage expertise relating to the environment and natural resources of Wales to be represented on the panel. The cultural services aspect of the ecosystem approach provides an integrating factor between the Natural Resource Management approach set out in the Environment (Wales) Bill and the protection and sustainable management of the Welsh Historic Environment as set out in the provisions of the Historic Environment (Wales) Bill. Clarification is sought on how the Panel may engage with the Ministers Historic Environment Group.

Potential barriers to the implementation of the Bill’s provisions

29. Generally, the extension of the definition of an Ancient Monument is a useful proposal. However, the inclusion of industrial waste heaps causes significant concern as when remediating contaminated sites, it is often waste heaps that contain the most contamination. Abandoned mines are the number one cause of failure to meet the requirements of the European Water Framework Directive in Wales, largely as a result of diffuse pollution from waste heaps. Remediation of these sites is already restricted by existing designations such as Special Areas of Conservation or Sites of Special Scientific Interest. Therefore, further designation of these waste heaps could add another barrier to dealing with mine pollution in Wales. NRW is used to working with listed buildings in the remediation process, but we would question having the contaminated land itself protected which would add significantly to an already complicated process with potential financial implications too.

Any unintended consequences

30. As stated in 338, page 73 of the Explanatory Memorandum, the Register of Historic Parks and Gardens has become firmly embedded in national and local planning policies. Similarly, the Register of Landscapes of Special Historic Interest in Wales. Collectively they form the Register of Historic Landscapes, Parks and Gardens. Whilst the Register of Parks and Gardens has become statutory, the Register of Historic Landscapes has not and is therefore not mentioned within the Bill or explanatory notes. Potentially an unintended consequence of this is to detract further from the status and recognition of the Registered Historic Landscapes. We note that reference is made to Registered Historic Landscapes in the draft Planning Policy Wales Chapter 6 and TAN 24, and we wish to see that recognition and material weight is maintained by their inclusion, with adequate explanation, in these documents.

Financial implications of the Bill

31. We agree with the Regulatory Impact Assessment in relation to establishing the Register of Historic Parks and Gardens on a statutory basis (option 3). Should NRW have any Registered sites on its estate, this would not add any significant financial

burden. There does not appear to have been any account taken of potential increased costs of protecting/managing sites in relations to Climate Change.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

32. No comments on this matter.

Draft Planning Policy Wales (PPW) Chapter 6

33. Given that Local Planning Authorities (LPAs) will also be developing area based policies affecting the historic environment, we suggest that the paragraph 6.4.1 could be amended to read: "Local development plans (LDPs) should have regard to national policies on the historic environment". Reference to the potential introduction of 'area statements' within Wales for the purpose of implementing the national natural resources policy through the Environment Bill could also be included to facilitate linkages to area based policies.
34. NRW welcomes the clarification that LPAs should take into account the Register of Historic Landscapes in Wales in preparing their LDPs and develop policies that will contribute to their protection and conservation (6.4.9). Section 6.4.10 of the current PPW, indicates that the Proposals Map should show the boundaries of areas of protection. This provides clarity for developers and other Plan users of the policies that apply within these areas. We therefore recommend that a similar statement should also be included in any amended Chapter 6 of PPW.
35. NRW welcomes the clarification that information on the Register of Historic Landscapes in Wales should be taken into account by local planning authorities, when considering the implications of developments which meet the criteria for Environmental Impact Assessment, or 'of more than local impact'. However, it is unclear how 'of more than local impact' will operate in practice. It is not clear from the current text at what stage in the planning application process Welsh Ministers will advise the applicant of a (non-EIA) proposal that they consider will have a 'more than local impact' (6.5.25). Additionally, it is recommended that the process should also include 'or a local impact that is highly significant'. 6.5.25 should state that the need to consider information contained in the Register will apply to the specified types of development, whether they are located within or outside the Registered Historic Landscape (where there is a likely effect).
36. Consideration should be given to highlight the need for LPAs to consider cumulative impact from development, including those in other consenting systems, for example Nationally Significant Infrastructure Projects.
37. We welcome the clarification provided in 6.5.26, but it requires amending to allow for an updated revision to the Guide to Good Practice taking on board recent practice, experience and proportionality.
38. An amendment is also required to allow for the historic landscape element of a historic environment assessment to be undertaken instead of an ASIDOHL2 where the ASIDOHL2 approach is not suitable. This would send a clear message of current best practice and approaches for assessing the effects of a proposed development on a historic landscape.

39. In light of the above, 6.5.25 and 6.5.26 could be amended to the following (or this detail may fit better within the TAN 8.4 and 8.5). “6.5.25 - Information on the Register of Historic Landscapes in Wales should be taken into account by local planning authorities in considering the implications of developments which meet the criteria for Environmental Impact Assessment and will affect an area on the Register of Historic Landscapes, or would have a more than local impact on an area in the Register or a local impact that is highly significant. The Guide to Good Practice on Using the Register of Landscapes of Historic Interest in Wales in the Planning and Development Process (Revised Edition, Cadw, Welsh Assembly Government and CCW, 2007, and any future revisions) provides guidance on the types of development which may have a ‘more than local impact’, or a ‘local impact that is highly significant’, on an area in the Register. Development proposals should be considered on a case by case basis, and proposals within and outside a Registered Historic Landscape can have an adverse effect. Local planning authorities and developers should seek the advice of Natural Resources Wales (note this is to be confirmed when formally consulted) and the relevant Archaeological Trust at the earliest opportunity when considering whether a proposed development would have a more than local impact, or a local impact that is highly significant, on an area in the Register. 6.5.26 - The Guide also includes a method for assessing the effects of proposed development on an area of historic landscape (ASIDHOL2). This method, or the historic landscape element of a historic environment assessment where appropriate, should be followed by applicants when preparing the relevant part of the Cultural Heritage chapter of their Environmental Statement. Where sought, Natural Resources Wales, Cadw and the relevant Archaeological Trust can advise whether an ASIDHOL2 or a historic landscape assessment should be undertaken in support of a planning application.”
40. PPW and the TAN should make appropriate reference to the need to take account of heritage coasts, historic seascape characterisation, marine historic assets and other interests in the coast and marine environment within development planning and consenting. It would also be helpful to reference in more detail the existing legislation and management arrangements that apply to other heritage assets in the marine environment, such as protected wrecks and war graves.

Draft Technical Advice Note (TAN) 24

41. The TAN should provide clarity, promote consistency, best practice and proportionality and is well on its way to do this. We would be happy to provide further comment during formal consultation.
42. NRW considers the historic environment to be very much embedded within the ecosystems services and benefits framework promoted through the Environment Bill. The value to society can be described through the cultural ecosystems services construct, contributing to inspiration, sense of place, tourism, and recreation. It would be advantageous to make the links between the historic environment and Natural Resource Management (NRM) explicit, to aid sustainable decision making (1.7). The NRM framework as set out in the Environment(Wales) Bill and accompanying Explanatory Memorandum as written, adequately reflects these considerations and should be reflected in the TAN. Welsh Ministers are also charged with publishing and implementing an integrated national natural resources policy which sets out how they plan to achieve sustainable management of natural resources. This will include considerations and benefits of those natural resources. The cultural services of

landscapes are, we understand, to be included and these are underpinned by the wider historic environment. It is therefore important that integrated natural resources policy at a national level is highlighted in this TAN. It would be helpful to add that NRW will be implementing the national natural resources policy by producing area statements. It would be appropriate for historic environment information to be considered in area based natural resource statements.

43. The TAN needs to be clear on the definition of 'national importance'. It is presented differently in 1.5 and 1.20 and needs clarification because the term has a bearing on weight given to an historic feature in the Environmental Impact Assessment process and thresholds at which significant effects are likely to occur and an objection triggered. The TAN needs to reference LANDMAP (section 1.13, page 3) and be clear on the relevance of the LANDMAP Historic Landscape evaluations to decisions when assessing the effects on Registered Historic Landscapes. Section 1.26 needs to specify who the local planning authority consults in regard to effects upon Registered Historic Landscapes.
44. NRW welcomes the recognition of the strategic, planning and well-being role of the Register of Historic Landscapes. The current text in 8.3, which relates to PPW text in 6.5.25 commented on above, requires further explanation.
45. Explanations in section 8.4 and Annex D5, which states that the boundaries will be those depicted on the Cadw website are supported, these areas have caused uncertainty in the past in development management.
46. 8.5 suggests that only those developments within or outside a Registered Historic Landscape that require an EIA are considered. However we consider that regulatory advice is provided to planning authorities on developments that may affect the historic environment with the potential for 'more than local impact' where they are within a Registered Historic Landscape or outside of a Registered historic landscape, where no EIA is required but the development is close enough to have 'more than local impact' on the Registered Landscape. We suggest that section 8.5 is amended to reflect this.
47. Additionally, the facility to maintain the register is important, we support the proposed modifications in 18 (1) (3) to add, remove or amend an entry to the Historic Parks and Gardens Register, a similar but non-statutory mechanism for the Register of Historic Landscapes will be important.
48. NRW is pleased to see the recognition of the role of the Register of Historic Landscapes in meeting the European Landscape Convention (ELC) measures in Annex D6 ensuring that this message comes across and providing the opportunity for future reference back to this.
49. Any references to the Conservation of Habitats and Species Regulations 2010 should read "Conservation of Habitats and Species Regulations 2010 (as amended)", this section should address all nature conservation legislation not just the Habitats Regulations.
50. We would suggest an additional paragraph within the Nature Conservation and the Historic Environment section on pages 6-7 as follows, ` within the wider environment

of Wales it is important to recognise the contribution of ancient, veteran and historic trees to people and places, both in terms of cultural and biodiversity value. The profile of these 'green monuments' has been raised through Coed Cadw and the Ancient Tree Forum but, a fuller inventory of where these trees are is needed, as well as exploring ways to better protect and care for this vulnerable resource, for example through partnership management agreements between Welsh Government, natural and heritage interests and landowners.

51. NRW recommends that reference is made to the management synergies between the historic and natural environments through geological cultural heritage which is evident in many listed buildings, scheduled monuments such as caves that are also Sites of Special Scientific Interest and peat records in designated bogs.
52. We would be pleased to offer our experience and expertise in contributing to the wording of any new text.

Managing Change in World Heritage Sites Guidance

53. NRW welcomes the draft guidance on Managing Change in World Heritage Sites (WHS). All three WHS in Wales lie within or adjacent to Statutory Designated Landscapes of Snowdonia National Park, Brecon Beacons National Park and Clwydian Range and Dee Valley AONB. Both landscape and heritage designations share very similar conservation principles but to different ends. There needs to be a promoted clear link made between statutory landscape and heritage designations to ensure their respective visions, management plans and management work on the ground as well as planning decisions regarding the management of change, are compatible and avoid unintended consequences. Forest Resource Planning can take account of heritage assets to achieve a positive outcome in the forest design for landscape and heritage, taking into account core features and key views within the setting and the buffer zone of the WHS. These aspects needs to be addressed in all of the draft papers; PPW, TAN24 and the World Heritage Site guidance. In due course the management of heritage designations will need to be integrated with the Natural Resource Management approach set out in Area Statements as proposed in the Environment (Wales) Bill.

Proposed hierarchy of legislation, planning guidance and best practice

54. We suggest the addition of the Environment Bill under Primary legislation and the 'Good Practice on Using the Register of Landscapes of Historic Interest in Wales in the Planning and Development Process' under Best Practice Guidance (it was previously included).

Future recommended additions

55. Best Practice Guidance on 'Managing Change in Registered Parks, Gardens and Landscapes in Wales' to add to the suite of guidance for the sustainable and integrated management of the historic environment.

Natural Resources Wales
18 June 2015