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Llywodraeth Cymru  
Welsh Government

# Historic Environment (Wales) Bill

Statements of Policy Intent

May 2015

## **1. Introduction**

- 1.1 These statements of policy intent set out the current policy approaches for the subordinate legislation for the Historic Environment (Wales) Bill. Consultation will be undertaken on each policy area and therefore the policy approaches may be subject to change. These statements have been prepared to assist the responsible committee during the scrutiny of the Historic Environment (Wales) Bill.
- 1.2 The Welsh Government considers that these subordinate legislative powers are essential in order to prescribe matters of procedural detail and provide flexibility for matters that may require adjustment to facilitate effective implementation and operation.
- 1.3 The Assembly procedure proposed for each subordinate legislative power is set out in detail in chapter 5 of the Explanatory Memorandum. The guidelines published by the Counsel General in January 2012 have been followed to ensure a consistent approach to the Assembly procedures.
- 1.4 A draft of the statutory guidance on historic environment records that will be issued under section 35 of the Historic Environment (Wales) Bill has also been produced to assist the Committee during scrutiny. This has been shared informally with key partners such as the Welsh Local Government Association, the Welsh archaeological trusts and the Royal Commission on the Ancient and Historical Monuments of Wales. Formal consultation on the guidance will be undertaken in late 2015/early 2016, once the provisions of the Bill have been finalised.

## **2. Consultation on and review of, certain scheduling or listing decisions made by the Welsh Ministers**

### **Powers**

- 2.1. Part 2, section 3 of the Historic Environment (Wales) Bill introduces new sections 1AA(6), 1AD(2) and 1AE(6) in the Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act'). Schedule 1 of the Bill introduces paragraphs 1(1) and 5 in new schedule A2 of the 1979 Act.
- 2.2. Part 3, section 24 of the Historic Environment (Wales) Bill introduces new sections 2A(5), 2D(6) and 28B(2) in the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act'). Schedule 2 of the Bill introduces paragraphs 1(1) and 5 in new schedule 1B of the 1990 Act.

### **Description**

- 2.3. Part 2, section 3 and Schedule 1 of the Historic Environment (Wales) Bill place a duty on the Welsh Ministers to consult with appropriate persons, including the owner and occupier, when proposing to add, remove or make a material amendment to an entry in the schedule of monuments. Section 1AA(6) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.4. The Bill also gives an owner or occupier the right, in certain circumstances, to request that the Welsh Ministers review a decision to schedule a monument or make a material amendment to an entry in the schedule of monuments. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
  - the grounds on which an application for a review may be made;
  - the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - the form and manner in which an application must be made;
  - the period within which an application must be made;
  - the procedure that is to be followed in connection with a review;
  - the conduct of public local inquiries and hearings;
  - the costs that may be required to be paid in connection with a review; and
  - the classes of review on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

- 2.5. Part 3, section 24 and Schedule 2 of the Bill introduce comparable measures for listed buildings. The Welsh Ministers must consult with the owner and other appropriate persons when proposing to add or remove an entry on the list of buildings of special architectural or historic interest. Section 2A(5) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.6. The provisions accord owners and occupiers the right, in certain circumstances, to request that the Welsh Ministers review a decision to list a building. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
- the grounds on which an application for a review may be made;
  - the form and manner in which an application must be made;
  - the information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - the period within which an application must be made; and
  - the classes of reviews on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

### **Policy intent**

- 2.7. To introduce flexibility into the categories of people with whom the Welsh Ministers will consult prior to designating an asset, so that those people with an interest in the building or monument have an opportunity to feed into the formal consultation process.
- 2.8. To create a mechanism for review that is flexible and responsive to meet the needs of the public and the Welsh Ministers. Stipulating the administrative arrangements in regulations will provide an effective and efficient legislative mechanism for the Welsh Ministers to amend the procedures based on experience.
- 2.9. Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation and directions are summarised below.

<b>Scheduled monuments</b>	
<b>Extend the categories of people that need to be consulted prior to designation.</b>	
<b>Part 2, section 3(1) which inserts new section 1AA(6) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AA(6) The Welsh Ministers may by regulations add to the list of appropriate persons in 1AA(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in the monument to be formally consulted prior to scheduling. If an additional category of person is identified, consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
<b>Review of certain decisions to schedule a monument</b>	
<b>Part 2, section 3(1) which inserts new section 1AE(6)(a)–(g) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AE(6)(a) The grounds on which an application for a review may be made	<p>The grounds of review will be limited to matters concerning the criteria for scheduling.</p> <p>It should be possible to seek a review on the basis that:</p> <ul style="list-style-type: none"> <li>• a factual error was made in the identification of the site as one of national importance;</li> <li>• the location or extent of the area was shown incorrectly on the map accompanying the scheduling entry; or</li> <li>• there is significant new evidence that was not previously considered relating to the national importance of the monument, for example, new information on the monument's date that makes a material difference to its national importance.</li> </ul> <p>The intention is not to provide a right of review on the grounds that scheduling will restrict the use of the land or result in adverse consequences for the owner or occupier.</p>
1AE(6)(b) The information that must be provided to, or may be required by, the Welsh Ministers in connection with an application	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers' decision.
1AE(6)(c) The form and manner in which an application must be made	The applicant will be able to make an application for review online or in writing using the form provided by the Welsh Ministers.

1AE(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers' decision to schedule a monument. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
1AE(6)(e) The procedure that is to be followed in connection with a review	The Bill requires reviews to be undertaken by written representations, hearings or inquiries. The appointed person will be able to determine the procedure for deciding the appeal. It is anticipated that rules similar to those that govern planning application appeals will be used. It is expected that, outside of exceptional circumstances, the appointed person would make a site visit.
1AE(6)(f) The conduct of local public inquiries and hearings	Local public inquiries and hearings are likely to follow the procedures that govern planning permission hearings and inquiries. It is anticipated that the majority of reviews will be undertaken by written representations and that public inquiries will be unusual.
1AE(6)(g) Costs that may be required to be paid in connection with a review	There is no charge for requesting a review, but the applicant will have to pay their own costs. However, an application for an award of costs may be made by a party on the grounds that the other party's unreasonable behaviour has caused the person applying for costs unnecessary expense. Such a circumstance may arise, for instance, when a hearing is cancelled at a late stage on the withdrawal of an appeal.
<b>Schedule 1 which inserts Schedule A2, paragraph 1(1) and paragraph 5 into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1(1) The classes of reviews on which a decision is to be made by an appointed person	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to schedule monuments. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by the Welsh Ministers	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.

<b>Compensation for loss or damage caused by interim protection</b>	
<b>Part 2, section 3(1) which inserts new section 1AD(2) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AD(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

<b>Listed buildings</b>	
<b>Extend the categories of people that need to be consulted prior to designation.</b>	
<b>Part 3, section 24(1) which inserts new section 2A(5) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
2A(5) The Welsh Ministers may by regulations add to the list of appropriate persons in 2A(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in a building and should be formally consulted prior to listing. If an additional category of person is identified then consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
<b>Review of certain decisions to list a building</b>	
<b>Part 3, section 24(1) which inserts new section 2D(6)(a)–(d) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
2D(6)(a) The grounds on which an application for a review may be made	<p>The policy intention is that the review must relate to the special architectural or historic interest of a building and:</p> <ul style="list-style-type: none"> <li>• the original decision was made wrongly — for instance, the wrong building was listed as a result of a factual error;</li> <li>• there was some irregularity in the process which affected the outcome — for example, relevant considerations were not taken into account or irrelevant considerations were taken into account; or</li> </ul>

	<ul style="list-style-type: none"> <li>there is significant new evidence that was not previously considered relating to the special architectural or historic interest of the building — for example, new information relating to the building’s date that makes a material difference to its architectural or historic interest.</li> </ul> <p>It is not anticipated that other factors, such as the cost of upkeep or repair of listed buildings or planning considerations, should be taken into consideration.</p>
2D(6)(b) The form and manner in which an application must be made	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The applicant will be able to make an application for review online or in writing.
2D(6)(c) The information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application	The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers’ decision.
2D(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers’ decision to list a building. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
<b>N.B.</b> It is anticipated that the same review procedures will be established for decisions on scheduled monuments and listed buildings. The 1990 Act and the Town and Country Planning Act 1990 already allow the Welsh Ministers to make provisions on the conduct of local and public inquiries and the costs that may be required to be paid. Separate provisions are therefore not required to cover those matters in the context of reviews of the Welsh Ministers’ listing decisions.	
<b>Schedule 2 which inserts Schedule 1B, paragraph 1(1) and paragraph 5 into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1(1) The classes of reviews on which a decision is to be made by an appointed person rather than the Welsh Ministers	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to list buildings. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is

the Welsh Ministers	undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.
<b>Compensation for loss or damage caused by interim protection</b>	
<b>Part 3, section 24(3) which inserts new section 28B(2) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
28B(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

### **3. Scheduled monument consent — simplification of process**

#### **Power**

- 3.1 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill introduces new section 5B and paragraph 1(3) to Part 1 of Schedule 1 in the 1979 Act.

#### **Description**

- 3.2 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill allows the Welsh Ministers to make regulations to set out the way in which they may grant scheduled monument consent and how an owner/occupier can apply for consent other than by using the prescribed form.

#### **Policy intent**

- 3.3 To create a consent process that is flexible and proportionate in order to meet the needs of the public and the Welsh Ministers.
- 3.4 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

<b>Scheduled monument consent — simplification of process</b>	
<b>Part 2, section 5(1) which inserts new section 5B into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
Form and content of scheduled monument consent	The 1979 Act requires scheduled monument consent to be granted in writing if works are to be authorised. The new section allows for the Welsh Ministers to grant scheduled monument consent in such other manner as they prescribe. The policy intent here is to allow the grant of consent electronically and to future-proof the system to keep pace with technological change.
<b>Part 2, section 5(2) which inserts new paragraph 1(3) in Part 1 of Schedule 1 of the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
Application may be made otherwise than in the form provided for in paragraph 1(1) of Schedule 1	Schedule 1, Part 1 of the 1979 Act provides for regulations on the form and manner in which applications for scheduled monument consent can be made. The new paragraph would give the Welsh Ministers flexibility to permit certain applications for scheduled monument consent to be made in a form other than that provided for in paragraph 1(1). This would allow for the introduction of a simplified scheduled monument consent process that would dispense with a written application and the interim consent stage, which provides the applicant with the opportunity to make further representations or require a hearing. Where the applicant and the Welsh Ministers agree on the use of this process, a scheduled monument consent letter could be issued simply authorising the works to a monument as described. This procedure would only be used for minor works.

## **4. Compensation for refusal of scheduled monument consent.**

### **Powers**

4.1 Part 2, section 10(2) of the Historic Environment (Wales) Bill introduces new section 7(4A) in the 1979 Act.

### **Description**

4.2 Section 7 of the 1979 Act makes provision for the payment of compensation in very limited circumstances when scheduled monument consent is refused or granted subject to onerous conditions. An owner or anyone with an interest in a monument who incurs a loss or damage because scheduled monument consent is refused (or is granted subject to conditions which make it impossible to use the monument in the case of c) below) may be entitled to compensation if the works proposed:

- a) are reasonably necessary to implement a planning permission granted before the monument was scheduled;
- b) do not constitute development or are permitted development under the provisions of a General Development Order; or
- c) are necessary for the monument to continue being used for the lawful purpose for which it had been previously used immediately before the date of the application for consent.

4.3 Section 7(4) states that compensation is not payable (under b) above) where refusal relates to works which would totally or partially destroy a monument except for the purposes of agriculture or forestry.

### **Policy intent**

4.4 The regulation-making power allows the Welsh Ministers to look further at the compensation provisions within the Act and to determine whether there is merit in the current policy of differential treatment for the purposes of agriculture and forestry compared with other purposes, especially taking into account current environmental protection legislation and agri-environment schemes.

## **5. Heritage partnership agreements**

### **Powers**

- 5.1 Part 2, section 11(1) of the Historic Environment (Wales) Bill introduces new section 9ZB(3) in the 1979 Act.
- 5.2 Part 3, section 28(1) of the Historic Environment (Wales) Bill introduces new section 26M(3) in the 1990 Act.

### **Description**

- 5.3 Owners of scheduled monuments and/or listed buildings will be able to enter heritage partnership agreements with the Welsh Ministers or local planning authorities. Such an agreement will grant consent for a programme of specified works during a fixed period, negating the need for separate consents for each set of works.
- 5.4 Part 2, section 11(1) of the Historic Environment (Wales) Bill inserts new sections 9ZA and 9ZB in the 1979 Act providing for heritage partnership agreements for scheduled monuments and for the Welsh Ministers to grant scheduled monument consent for works as part of an agreement. Section 9ZB(3) provides powers for the Welsh Ministers to make provision by regulations for:
- any consultation that must take place before a heritage partnership agreement is made or varied;
  - the publicity that must be given to a heritage partnership agreement before it is made or varied;
  - terms that must be included in a heritage partnership agreement;
  - enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
  - the provision that may be included in such an order; and
  - disapplying, or applying or reproducing with or without modifications, any provision of the Bill for the purposes of heritage partnership agreements.
- 5.5 Part 3, section 28(1) of the Historic Environment (Wales) Bill inserts new sections 26L and 26M in the 1990 Act putting equivalent measures in place for listed buildings, including the power for local planning authorities or the Welsh Ministers to grant listed building consent for works covered by the agreement. Section 26M(3) provides powers for the Welsh Ministers to make provision by regulations for:

- any consultation that must take place before a heritage partnership agreement is made or varied;
- the publicity that must be given to a heritage partnership agreement before it is made or varied;
- terms that must be included in a heritage partnership agreement;
- enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
- enabling any local planning authority who is party to an agreement to terminate;
- the provision that may be included in such a termination order;
- disapplying, or applying or reproducing with or without modifications, specified provisions in the 1990 Act relating to the listed building consent process for the purposes of heritage partnership agreements; and
- any consequential amendments that may be required to specified sections of the 1990 Act.

### **Policy intent**

- 5.6 To improve the sustainable management of Wales' statutorily designated historic assets by creating powers for consenting authorities, owners and other interested parties to enter into long-term, voluntary management plans which can provide all the necessary statutory consents for an agreed programme of works. Stipulating the details of the administrative arrangements in regulations will allow for flexibility and for the procedures to be amended relatively quickly based on experience.
- 5.7 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

<b>Heritage partnership agreements for scheduled monuments</b>	
<b>Part 2, section 11(1) which inserts new section 9ZB(3) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
9ZB(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple scheduled monument consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require the Welsh Ministers to consult with the relevant local planning authority, the appropriate archaeological trust and other bodies with pertinent expertise prior to agreeing to a heritage partnership agreement. The consultation and publicity process will last for a minimum of 28 days.
9ZB(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the Welsh Ministers to publish online information on a proposed heritage partnership and to make any owner or occupier not party to the agreement aware of it.
9ZB(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 9ZB(1), including that it must be in writing and provide for review, termination and variation. The regulations will supplement these by specifying any other terms that must be included in an agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
9ZB(3)(d) Enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement	The intention is that the Welsh Ministers will have the power to terminate a heritage partnership agreement where, as a last resort, this is considered necessary to protect the national importance of a scheduled monument and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.
9ZB(3)(e) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision	If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any scheduled monument consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.

9ZB(3)(f) Disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements	The regulations will set out the sections of the 1979 Act which will apply or disapply to heritage partnership agreements. Thus, the regulations may apply the provisions in the Act that deal with the control of works affecting scheduled monuments and unauthorised works, but may disapply the provisions in the Act that set out the duration of scheduled monument consent.
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<b>Heritage partnership agreements for listed buildings</b>	
<b>Part 3, section 28(1) which inserts new section 26M(3) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
26M(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple listed building consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require local planning authorities to consult specified amenity bodies, such as the Georgian Society, the Victorian Society or the Twentieth Century Society, as well as the Welsh Ministers if they are not party to the agreement. These arrangements are similar to those that are currently in place for listed building consent applications. The consultation and publicity process will last for a minimum of 28 days.
26M(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the local planning authority to publish online the information on a proposed heritage partnership agreement and to make any owner or occupier not party to the agreement aware of it.
26M(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 26M(1), including that it must be in writing and provide for review, termination and variation of the agreement . The regulations will supplement these by specifying any other terms that must be included in the agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
26M(3)(d) and (e) Enabling the Welsh Ministers or local planning authority to terminate by order a heritage partnership agreement or any	The intention is that the Welsh Ministers and a local planning authority who is party to an agreement will have the power to terminate it where, as a last resort, this is considered necessary to protect the special interest of a listed building and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed

<p>provision of such an agreement</p>	<p>circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.</p>
<p>26M(3)(f) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision</p>	<p>If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, a local planning authority or some other specified person, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any listed building consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.</p>
<p>26M(3)(g) Disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26 , 28 and 38 to 46 for the purposes of heritage partnership agreements</p>	<p>The regulations will set out sections of the 1990 Act which will apply or disapply to heritage partnership agreements; these sections relate to the application, notification, consent and appeal processes, and enforcement for listed building. For example, the regulations may apply the provisions in the Act that allow conditions to be placed within listed building consent decisions or those that allow applications for listed building consent to be referred to Welsh Ministers. As heritage partnership agreements are voluntary, the rights of applicants will not be undermined.</p>
<p>26M(3)(h) Providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph:</p> <ul style="list-style-type: none"> <li>i. sections 30 to 37;</li> <li>ii. sections 62 and 63;</li> <li>iii. Parts 3 and 4;</li> <li>iv. Schedule 3.</li> </ul>	<p>The provision would allow the regulations to modify provisions of the 1990 Act that have the potential to be affected as a consequence of the substitution of the heritage partnership agreement for the listed building consent process. These could include provisions pertaining to compensation, listed building purchase notices and the classes of appeals to be determined by a person appointed by the Welsh Ministers.</p>

## **6. Temporary stop notices**

### **Power**

- 6.1 Part 2, section 13(1) of the Historic Environment (Wales) Bill introduces new section 9ZL(1) in the 1979 Act.
- 6.2 Part 3, section 29(1) of the Historic Environment (Wales) Bill introduces new section 44B(11) and 44D(1) in the 1990 Act.

### **Description**

- 6.3 Part 2, section 13(1) inserts new sections 9ZI–9ZL into the 1979 Act to govern new powers for Welsh Ministers to issue temporary stop notices requiring the immediate cessation of specified works to scheduled monuments for a period of 28 days. New section 9ZL sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the service of the temporary stop notice, while 9ZL(1) allows Welsh Ministers to prescribe the time and manner in which a compensation claim must be made.
- 6.4 Part 3, section 29(1) inserts comparable measures (new sections 44B–44D) for local planning authorities to issue temporary stop notices requiring the immediate cessation of specified works to listed buildings. New section 44B(11) allows the Welsh Ministers to make regulations prescribing works to which temporary stop notices shall not apply. New section 44D(1) allows the Welsh Ministers to prescribe the time and manner in which a compensation claim must be made in respect of any loss or damage directly attributed to the service of the temporary stop notice.

### **Policy intent**

- 6.5 Temporary stop notices will give the Welsh Ministers and local planning authority effective measures to put an immediate halt to unauthorised works that are damaging designated historic assets.

<b>Temporary stop notices — scheduled monuments</b>	
<b>Part 2, section 13(1) which inserts new section 9ZL(1) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
9ZL(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

<b>Temporary stop notices — listed buildings</b>	
<b>Part 3, section 29(1) which inserts new sections 44B(11) and 44D(1) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
44B(11) The Welsh Minister may prescribe works to which temporary stop notices shall not apply.	The new power will enable the Welsh Ministers to exclude certain works from the direct or indirect application of temporary stop notices for listed buildings. The expectation is that temporary stop notices will be used infrequently against unauthorised works and it is not anticipated that classes of works will need to be exempted. However, if experience of the use of the notices warrants such an exemption, the regulation-making powers will provide a means to ensure that temporary stop notices function in an appropriate manner.
44D(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice.. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

## **7. Historic environment records**

### **Powers**

7.1 Part 4, section 33(9) of the Historic Environment (Wales) Bill confers powers to make regulations.

7.2 Part 4, section 36 of the Historic Environment (Wales) Bill confers powers to issue guidance.

### **Description**

7.3 Part 4, sections 33 to 36 of the Historic Environment (Wales) Bill set out the requirement for the establishment of historic environment records in Wales. Section 33 places a duty on each local planning authority to create and maintain an up-to-date historic environment record for its particular area. Section 33(2) sets out the information that must be contained in a historic environment record, which includes:

- details of those historic assets that are statutorily protected or registered under the 1979 or 1990 Act;
- details of every conflict site which the authority considers to be of historic interest;
- details of every historic landscape in the authority's area;
- details of every world heritage site in the authority's area;
- details of every other area or site or other place in the authority's area which the authority considers to be of historic, archaeological or architectural interest;
- information about the way in which the historic, archaeological or architectural development of the authority's area or any part of it has contributed to the present character of the area or part and about how that character may be preserved, and
- details of relevant investigations carried out in the authority's area and of the findings of those investigations.

7.4 Section 33(9) enables the Welsh Ministers to amend, by regulations, the categories of information that must be contained in a historic environment record. The Bill requires the Welsh Ministers to consult local planning authorities and any other persons whom they consider appropriate before making the regulations.

7.5 Section 36 allows the Welsh Ministers to issue guidance on creating and maintaining historic environment records, the publication of historic environment records and the charging of fees in connection with their publication, and the making of

arrangements for the discharge of functions related to historic environment records. Prior to issuing the guidance, the Welsh Ministers must consult with the local planning authorities and any other persons whom they consider appropriate.

### **Policy intent**

- 7.6 The regulation-making power provides flexibility for the Welsh Ministers to amend the definition of a historic environment record in the future should it be deemed necessary. The categories of information included in the Bill are based on the current content of the historic environment records. In the future, other categories of information on the historic environment may be deemed necessary to inform archaeological and other heritage advice and actions. For example, it may be deemed appropriate to require the inclusion of culturally significant sites or intangible heritage, or to amend the requirement to include 'every other site... in an authority's area' and replace with a more defined list. The effectiveness of the categories in the Bill will be reviewed as part of the monitoring of benchmarks and standards by the Royal Commission on the Ancient and Historical Monument of Wales on behalf of the Welsh Ministers.
- 7.7 The request to amend the categories of information contained in a historic environment record is likely to come from the historic environment sector. The Welsh Ministers will liaise closely with the Royal Commission on the Ancient and Historical Monuments of Wales, local planning authorities and other interested organisations, such as the Welsh archaeological trusts, in framing any new requirement. In addition, as required by the Bill, the Welsh Ministers will formally consult with local planning authorities and others prior to making the regulations.
- 7.8 A draft of the guidance to be issued under section 36 of the Bill accompanies this statement of policy intent. The draft has been shared with the Royal Commission on the Ancient and Historical Monuments of Wales, the Welsh Local Government Association and the Welsh archaeological trusts and will be consulted upon once the provisions of the Bill have been finalised.

## **8. Advisory Panel for the Welsh Historic Environment**

### **Power**

8.1 Part 4, section 38(7)(h) of the Historic Environment (Wales) Bill confers powers to make regulations.

### **Description**

8.2 Part 4, section 37 of the Historic Environment (Wales) Bill requires the Welsh Ministers to establish the Advisory Panel for the Welsh Historic Environment. Section 38 makes provision about the constitution and membership of the panel. Subsection (7) sets out categories of people who are disqualified from membership of the panel, which include members of:

- the National Assembly for Wales,
- the House of Commons or the House of Lords,
- the European Parliament,
- a county council or county borough council, or
- a National Park authority.

8.3 In addition, subsection 7(h) will allow the Welsh Ministers to make regulations to disqualify staff from other organisations from panel membership.

### **Policy intent**

8.4 The panel will need to demonstrate independence, integrity and impartiality. The panel will provide advice to the Welsh Ministers on a range of policy, strategy and funding issues. Many of the decisions taken by the Welsh Ministers on these issues may impact directly on a range of organisations be it in terms of the policies that they have to implement or the funding that they might (or might not) be awarded. The categories of persons under consideration for disqualification are:

- staff employed by the Welsh Government,
- staff employed by the Royal Commission on the Ancient and Historical Monuments of Wales, and
- staff employed by the four Welsh archaeological trusts.

8.5 It will not be possible to eliminate all conflicts of interest, since the pool of people with the required expertise, skills and knowledge is relatively small. Operating protocols will be used to deal with any potential conflicts of interest beyond those identified in the legislation and regulations.