

Culture, Welsh Language and Sport Committee

CWLS (2) 15-06 (p2)

Meeting date: Wednesday 15 November 2006

Meeting time: 9:00am - 12:00pm

Meeting venue: Committee Room 2, Senedd

Heritage Protection Review – Proposed White Paper

Issue

1. That the Committee notes and discusses proposals arising from the reviews in England and Wales of the heritage protection system. The proposals will be published in a joint England and Wales White Paper which will have a specific section covering Wales to highlight some differences in practice and some distinctive proposals.

Timing

2. It is envisaged that the joint White Paper will be published towards the end of the year, with a bid for a slot in the 2007-08 UK Parliament legislative programme.

Background

3. Reform of the heritage protection system was first raised in 2003 and Culture Committee considered and discussed then the draft consultation paper ‘The Protection of Historical Assets in Wales’. A similar consultation was undertaken in England. There has been a long period of consultation involving a number of seminars and pilot projects to test some of the proposed reforms. A consultation seminar was held in Wales in June 2006, with a further opportunity over the summer for interested parties and organisations to comment on the seminar report.

4. Drafting of the White Paper is proceeding in the light of the extensive consultation exercises in each country and subsequent comments, including any from Committee members. In Wales account is also being taken of the new powers available under the Government of Wales Act 2006.

Present Arrangements

5. The current legislation is:

- The Ancient Monuments and Archaeological Areas Act 1979 outlines measures to protect ancient monuments, introducing the concept of a ‘schedule’;

- The Planning (Listing Buildings and Conservation Areas) Act 1990 governs the listing of buildings of special architectural or historic interest, and alterations to listed buildings, and
- The Town and County Planning Act 1990 which sets out the planning powers of local planning authorities and the National Assembly.

6. Scheduled monuments – essentially sites and structures, whether above or below ground, which may have no economic use – are expected to be preserved as they are, whereas listed buildings are expected to stay in use and hence may need to be adapted to accommodate that use. There is no absolute boundary between the two and some structures can be both listed and scheduled. The decision to schedule a monument is much more discretionary than listing. Only monuments of national importance are scheduled and, once in place, scheduling applies much tighter controls over works, requiring consent from the Assembly Government.

7. Listing applies to individual structures of special architectural or historic interest and, once identified as such, the legislation requires that the structure shall be listed. There is no discretion not to list. Scheduling applies to a specified protected area. Wider areas of historic landscape, townscape or architectural interest, where it is the whole not just the parts which is worthy of conservation, can be protected only by the weaker regime of local authority designated conservation areas, or as a non-statutory registered landscape, park or garden.

Proposed Reforms

8. The principal aim of the proposed reforms is to simplify and rationalise the current designation (listing and scheduling etc) regimes and associated consent procedures and to provide for more openness and accountability. The main elements in England and to which we largely subscribe in Wales are

- A register of historic sites and buildings bringing together the current regimes for listed buildings, scheduled monuments, registered parks and gardens and battlefields and incorporating World Heritage Sites
- Expanded descriptions to go with designations together with justifications to show the reasons for designation
- Prior consultation with owners on proposals to designate
- A statutory right of appeal against designation decisions
- A unified consent process based on an integrated designation regime, bringing together scheduled monument and listed building consents, to be administered at the local level
- Heritage partnership agreements consisting of optional statutory management agreements for more complex sites, again being delivered at the local level
- A new network of Historic Environment Records to act as the first point of reference for information on historic assets and to inform the management of change
- Improvement of the controls on agricultural cultivation (eg ploughing) where it adversely affects archaeological sites
- Introduction of controls on the demolition of non-designated but locally important buildings

Welsh perspective

9. The principal reforms have general support from consultees in Wales. However, and this was also supported strongly in consultation, there are some specific instances where the case for reform is not so strong because of differing practices in Wales or where perhaps different arrangements for implementation need to be put in place. Some of the English proposals are directed towards a transfer of functions to English Heritage and a need to address poor and dated information on heritage assets. In Wales, all designations are undertaken within the Assembly Government and the information base is in much better shape. Any new legislation flowing from the proposed White Paper could give equivalent powers to Welsh Ministers as would be given to their Whitehall counterparts but within a flexible framework to enable different application on the ground to suit Welsh circumstances, if need be. Any Bill would also give the opportunity to seek Measure making provision for the Assembly which would give it the legislative competence to make Assembly Measures, if it wished, within the field of ancient monuments and historic buildings, if it wished. This would be done by inserting a Matter into Schedule 5 of the Government of Wales Act 2006, under Field 2: ancient monuments and historic buildings.

10. Particular differences to note in Wales are

- a completed survey of listed buildings and a well-advanced programme of scheduling all the better known monuments, with the majority of historic assets having full descriptions of their importance
- very few local authorities have in-house archaeological expertise, relying instead on the services of the four Welsh Archaeological Trusts; decisions on changes affecting scheduled monuments are handled by the Assembly Government through Cadw, which is acknowledged as the principal body of expertise in relation to the archaeological resource and has a proven track record. The numbers are not great and many applications for consent are associated with grant from Cadw or are applications from local authorities.
- In Wales, Historic Environment Records are not held by local authorities but by the Archaeological Trusts who do not have statutory status. Accordingly, the statutory duty being advocated for local authorities might perhaps be phrased flexibly to accommodate the Welsh situation, viz, to place a statutory duty on local authorities to maintain historic environment records either directly or, if they were unable to do this, through the agency of others.
- The unified Register in England will incorporate historic battlefields. There is as yet no Battlefields Register in Wales but, with the Royal Commission on the Ancient and Historical Monuments of Wales, officials are considering its feasibility. If so, it could be incorporated into a unified Register in due course.
- The Register of Parks and Gardens of Historic Interest in Wales was compiled on a voluntary basis; consultees in Wales generally considered that this should be made statutory, as in England, and this could be accommodated within the proposed unified register of designations.

Discussion

11. The Committee is asked to consider the proposed reforms which have been drawn up in the light of consultation, together with the differences in practice highlighted in the Welsh perspective above. Do members have any comments to feed into the White Paper please and, particularly, the Welsh section?