

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 8 May 2017

Meeting time: 10.30

For further information contact:

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Committee Clerk

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**1 Introduction, apologies, substitutions and declarations of interest**  
(10.30)

**2 A stronger voice for Wales inquiry: Evidence session 7**  
(10.30 – 11.30) (Pages 1 – 8)

The Rt Hon. the Lord Hain

**CLA(5)–12–17 – Research Service briefing**

**3 A stronger voice for Wales inquiry: Evidence session 8**  
(11.30 – 12.30)

The Rt Hon. Rhodri Morgan

**4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for items 5 and 6 only**  
(12.30)

**5 A stronger voice for Wales inquiry: Consideration of evidence**  
(12.30 – 12.40)



**6 A stronger voice for Wales inquiry: Update on the timetable for the inquiry**

(12.40 – 12.50)

(Pages 9 – 17)

CLA(5)–12–17 – Paper 1 – Update on the inquiry timetable

**Lunch break**

(12.50 – 13.30)

**7 Codification and consolidation of Welsh law: Evidence session 1**

(13.30 – 14.15)

(Pages 18 – 33)

Mick Antoniw AM, Counsel General for Wales

Dylan Hughes, Welsh Government

Claire Fife, Welsh Government

CLA(5)–12–17 – Paper 2 – Written evidence from the Counsel General

CLA(5)–12–17 – Research Service briefing

**8 UK Government's White Paper on the 'Great Repeal Bill': Evidence session 1**

(14.15 – 15.00)

Mick Antoniw AM, Counsel General for Wales

Jeff Godfrey, Welsh Government

Dianne Dunning, Welsh Government

[UK Government's White Paper on the 'Great Repeal Bill'](#)

**9 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

(15.00)

(Pages 34 – 46)

**CLA(5)–12–17 – Paper 3 – Statutory Instruments with clear reports**

**Negative Resolution Instruments**

**SL(5)091 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017**

**SL(5)092 – The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017**

**SL(5)093 – The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017**

**SL(5)094 – The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017**

**SL(5)095 – The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017**

**SL(5)096 – The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017**

**SL(5)097 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017**

**SL(5)099 – The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017**

**SL(5)101 – The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017**

**SL(5)103 – The Seed Potatoes (Wales) (Amendment) Regulations 2017**

## **10 Instruments that raise issues to be reported to the Assembly under Standing Order 21.7**

(15.00 – 15.05)

No Resolution Instrument

**SL(5)098 – Statutory Guidance – Historic Environment Records in Wales:  
Compilation and Use**

(Pages 47 – 76)

**CLA(5)–12–17 – Paper 4 – Statutory Guidance  
CLA(5)–12–17 – Paper 5 – Draft report**

## **11 Papers to note**

(15.05 – 15.10)

**Written Statement: Progress update on the work of the Justice Stakeholder Group**

(Pages 77 – 80)

**CLA(5)–12–17 – Paper 6 – Written Statement by the Cabinet Secretary for  
Communities and Children, 10 April 2017**

**Additional Learning Needs and Education Tribunal (Wales) Bill: Correspondence  
from the Minister for Lifelong Learning and the Welsh Language**

(Pages 81 – 84)

**CLA(5)–12–17 – Paper 7 – Correspondence from the Minister for Lifelong Learning  
and the Welsh Language, 11 April 2017**

**Inquiry into the Great Repeal Bill and its implications for Wales: Correspondence from the Chair of the External Affairs and Additional Legislation Committee**

(Pages 85 – 87)

**CLA(5)–12–17 – Paper 8 – Correspondence from the Chair of the External Affairs and Additional Legislation Committee, 27 April 2017**

**Committee's response to the Procedure Committee of the House of Commons' inquiry into delegated powers in the 'Great Repeal Bill'**

(Pages 88 – 90)

**CLA(5)–12–17 – Paper 9 – Committee's response to the Procedure Committee of the House of Commons' inquiry into delegated powers in the 'Great Repeal Bill'**

[House of Commons Procedure Committee - 7th Report - Matters for the Procedure Committee in the 2017](#)

**12 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(15.10)

**13 Codification and consolidation of Welsh law: Consideration of evidence**

(15.10 – 15.20)

**14 UK Government's White Paper on the 'Great Repeal Bill':  
Consideration of evidence**

(15.20 – 15.30)

**15 Additional Learning Needs and Education Tribunal (Wales) Bill:  
Draft report**

(15.30 – 15.45)

(Pages 91 – 117)

**CLA(5)–12–17 – Paper 9 – Draft report**

**Date of the next meeting**

15 May 2017

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# Agenda Item 7

## CONSOLIDATION AND CODIFICATION OF WELSH LAW

### Paper presented to the Constitutional and Legislative Affairs Committee by the Counsel General for Wales

1. I consider consolidation of the existing statute book, codification of Welsh laws and improved publication and accessibility of our laws to be a necessity. It will help the citizens of Wales access and understand the law, it will bring more clarity to our highly complex system of government and make developing, interpreting and administering the law more efficient. In December 2016 I made clear my view that we should embark on a lengthy and difficult path to develop more orderly systems of law making and publishing – in fact I believe we have little choice but to do so.
2. It is tempting to see this as a technical matter, an issue of concern merely for lawyers. It is also – quite naturally – unlikely to be a task that anyone would consider a priority. But neither is it a luxury. The citizen having a fighting chance to understand the law that governs him or her is fundamental to the rule of law. Generally speaking the assistance of lawyers is out of reach for most so something else must be done about the proliferation and complexity of our laws. The complexity of our law is also one of the reasons why our devolution settlement is so difficult to understand. Establishing where power lies is not straightforward partly because the law on the subjects devolved to Wales is hard to find and because the majority of the statute book for which we are now responsible is still shared with England. European transition will exacerbate this position as the short term steps taken by necessity to transform European law to domestic law are likely bring their own problems.
3. Whilst the Law Commission's report on *Form and Accessibility of the Law Applicable in Wales* provides a light to lead the way, further thought has had to be given to exactly what steps we need to take to create codes of Welsh law. The exceptional constitutional challenges in the coming months and years also make it difficult to commit to specific action over the short to medium term at least. But I hope that – despite everything – we can continue and see the work through. We will no doubt have to divert resources to other priorities along the way but ultimately the need to improve access to our laws is something I think we should not forget.
4. I announced, therefore, that during 2017 and into 2018, we will be undertaking a pilot programme of consolidation, codification and better publication. This paper provides more detail on the work that I anticipate will be undertaken during this period.

#### **Codification**

5. It is important to be clear what is meant by “codification” of Welsh law. We are still developing our thinking about more detailed issues such as the legal nature and taxonomy of Codes, how Codes would be maintained after they are made, and how they should be published and cited.
6. However we have already determined that our vision of a Code is different to that set out by the Law Commission in the *Form and Accessibility* report. In my view the word “code”

implies something comprehensive, not one part of the legislative framework. I see no immediate reason why a Code should not be wider than a single Act, nor why it should exclude the subordinate legislation and quasi-legislation on a topic.

7. So currently, we are working on the premise that:

- a. a Code is to be comprehensive, in that it contains all the applicable legislation (primary and secondary legislation, and guidance or other similar documents made under the Acts or subordinate legislation) that falls within the subject matter of the Code<sup>1</sup>;
- b. the existing hierarchy within, and delineation between, the legislative instruments (primary, secondary, etc.) will remain; and
- c. all legislation within the Code will be made in both English and in Welsh (both, of course, having equal standing).

8. Our current expectations for the key features of a Code are that:

- a. the legislation within the Code is collected/grouped under a unifying overarching title, and the use of this title creates a connection between its component parts;
- b. a Code may consist of one or more “principal Acts” which sets out the primary law on one or more coherent parts of the subject matter of the code (or in the case of a Code made up of one principal Act, all of it);
- c. principal Acts will contain key concepts, core matters, defined terms and “boiler plate” provisions which are likely to apply across the Code, horizontally (to any other principal Acts in the Code) and vertically (to subordinate legislation and guidance etc.);
- d. a principal Act will be judicially noticed (as an Act of the National Assembly);
- e. specifying legislation to be part of an existing Code should have procedural implications within the Assembly in terms of maintenance (including amendment) and publication (including printing)<sup>2</sup>;
- f. the specific Acts, Statutory Instruments and guidance comprising the Code are to be listed within the Code as forming part of that Code;
- g. depending on the form and nature of the Code, an individual Act or Statutory Instrument etc. which is part of the Code is likely to contain a statement to that effect<sup>3</sup>;

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<sup>1</sup> Though this will be subject to the limitations of the legislative competence of the National Assembly and to the taxonomy we will develop for dealing with provisions that could fall within more than one subject.

<sup>2</sup> The initial creation of a Code will also, to the extent that it is a consolidation or restatement exercise, receive certain procedural protections.

<sup>3</sup> This may need to be a non-amendable statement in a Bill or Statutory Instrument

- h. if necessary or helpful, there will be an index (or table) of defined expressions within the Code; for example, where, in addition to the main defined terms in the principal Act(s), there are defined terms which appear elsewhere;
  - i. any cross-references to the Code in legislation outside of the Code will, without more, be treated as references to the Code in its entirety.
- 9. During the pilot programme we will be developing and testing these assumptions and key features, and I therefore caution that these could change as our examination of the issues deepens.
- 10. More generally however, if we pursue this work on a long term basis, taken collectively the Codes will establish a coherent structure setting the law out subject by subject. We would seek to ensure Codes are produced on all the major areas of devolved law: health and health services, social care, housing, education, local government and so on.
- 11. I agree with the Law Commission that the status of a Code should attract certain procedural safeguards. I wish to ensure that subsequent legislative reform on a topic that has been codified would not take place outside of the Code, but rather within it. This would avoid future fragmentation of the statute book.
- 12. Crucially, it is imperative that the Codes, once produced, are available in an easily accessible manner. We are considering therefore what publication arrangements we could adopt to supplement what is currently being done now – and will continue to be done – by The National Archives (specifically through [legislation.gov.uk](http://legislation.gov.uk)). Maintaining Codes and maintaining up-to-date publication of the Code are matters we will be investigating during the pilot programme.

### ***Consolidation***

- 13. To create a Code we need coherent statutes on the subject matter of the Code. In practice this means consolidating existing law. During the last Assembly the Welsh Government took the opportunity, wherever practicable, to restate existing law within the Bills it brought forward. This involved adopting existing provisions that applied to Wales and also to England or other parts of the UK set in a clearer, specifically Welsh context. We will continue to do that, as appropriate in this Assembly. However, that has its limitations and we are yet to bring forward a large-scale consolidation Bill – something that would accelerate the process of modernising and rationalising Welsh law and enable us to create Codes.
- 14. My intention is that we will take one or more existing areas of law, which are well established and relatively settled, and draft consolidated text for Wales. I say more about the actual projects that are underway below, but for the purposes of the pilot we want to understand what it takes – in practical detail – to scope and draft a consolidation Bill in both languages.

15. Scoping is the process of identifying the relevant existing statutes, understanding how they currently work (in theory and in practice) and considering how they may be unpicked and re-stitched together to create a consolidated text. This text will then be redrafted in more modern and succinct language, will (most likely) be structured more logically and coherently, and will be bilingual. (An important feature of this work is that despite both English and Welsh having equal status in law in Wales, most of our laws predate the creation of the National Assembly as a fully fledged legislature.)
16. I agree with the central premise of the Law Commission's findings that there must be a means of consolidating the law effectively, without routinely exposing the law where it is not being reformed to full political scrutiny. That is the approach taken in Westminster and the UK Parliament, and indeed in common law jurisdictions around the world. I do not believe any government would be willing to proceed with an initiative of this kind without procedures that de-politicise consolidation Bills.
17. Repealing statute law no longer in use (indeed statute law which may never have been used) and simplification and reorganisation of existing provisions, will contribute to improved readability and understanding of the law – a clear societal and economic benefit. Doing this is, however, likely to require technical changes in many circumstances. Although these would fall short of substantive policy reform they would involve minor changes to the law. The extent to which such changes can be permitted under a consolidation procedure is something that will need to be agreed. Starting the process will provide us with crucial knowledge about the type and nature of technical changes which need to be made in a Welsh context.
18. I am very pleased that the Business Committee has agreed that work can now be undertaken to develop a Standing Order on a consolidation procedure, and the Llywydd has kindly agreed that Government officials working on the pilot projects can share their learning with Assembly officials in order to aid the development of the procedure and supporting documentation.
19. Finally the consolidation work will also consider the recommendations of the Law Commission in relation to subordinate legislation. I was pleased the Law Commission considered this issue, as there are many thousands of pages of subordinate legislation on the statute book, a significant factor to the increasing inaccessibility of legislation. Further work is required to understand the technical implications of (particularly) Recommendation 12<sup>4</sup> of their report, but I see much merit in this from an accessibility perspective. If the technology can adapt, and a suitable procedure be adopted, then this should save time for all involved and make for clearer legislation for the end user.

### ***Better publication***

20. During the pilot programme I want to consider how we can better use the Cyfraith Cymru/Law Wales website. Our website currently acts as a portal to legislation.gov.uk for some Acts, and I would like to see this expand further once Codes are developed. We are

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<sup>4</sup> Recommendation 12: When secondary legislation is amended, the updated text of the statutory instrument should then be laid before the National Assembly, rather than an amending statutory instrument. (Law Commission (2016) *Form and Accessibility of the Law Applicable in Wales*)

also looking to make improvements by encouraging more contributions of explanatory material on Welsh law, and whether we have the resources available to develop an information service. It is certainly the case that the Law Commission's recommendations in relation to the website are consistent with our wider and long-term ambitions.

21. In so far as legislation.gov.uk is concerned I strongly believe the law needs to be promulgated so that those affected by it can actually view it; and for us that means it is in an up-to-date form (in both English and Welsh where it has been made bilingually) and viewable without charge. This principle should apply to both primary and subordinate legislation.
22. The Law Commission's recommendations and findings in relation to the Cyfraith Cymru website and legislation.gov.uk will, therefore, be evaluated as part of the pilot.
23. As part of the 'better publication' aims for the pilot, we will also fully explore the practicalities and feasibility of establishing a Queen's Printer for Wales. This was a matter considered in both the Law Commission's report, albeit they viewed this as outside the remit of the project, as well as the *Making Laws in Wales* report. However our work on the benefits and costs has only just begun, and as such I am not yet in a position to provide more detail to the Committee on this now.

#### ***Historic environment and planning projects***

24. For the purposes of this pilot programme, we have chosen to scope and draft consolidated text in relation to the historic environment in Wales. We have chosen it for a number of reasons:
  - a. the Assembly recently agreed new legislation in this area, and indeed had we been able to in the last Assembly we would have ideally consolidated the legislation for Wales at that time, so the legislative field in this area is relatively settled;
  - b. the existing legislation is predominantly only available in the English language;
  - c. the law in this area, although not lengthy, has expanded significantly over the years to incorporate different provisions for England, Scotland and Wales often within the same statute; and
  - d. much of the existing legislation was originally passed a number of years ago, and in many aspects does not reflect modern drafting approaches.
25. A further reason for choosing this project is the relationship – both practical and legislative – between historic environment and planning. As the Committee will be aware we are working with the Law Commission on a planning code for Wales and the Commission will be publishing a consultation document in the summer. That project will continue beyond the life of the pilot programme. I should make clear that although work will continue throughout 2017 on the historic environment exercise, the Government will consider in due course the most appropriate time to bring forward any consolidation legislation. It

may be more appropriate for the historic environment work to wait until the planning work is more advanced or even ready for introduction to the Assembly.

26. The inter-relationships between areas of the law, and individual projects, are an important aspect of any long-term programme. The lessons we will learn during the pilot programme in this regard will be important for our future approaches.

### ***Welsh Interpretation Act***

27. During the pilot programme, I will be considering the arguments for and against developing an Interpretation Act for Wales. This was a matter considered in the *Making Laws in Wales* report, and the Committee supported such a development. I see particular merit in ensuring there is proper provision in the Welsh language for key terminology, but there are other matters which also need to be considered. I therefore hope to publish a policy consultation document on this matter in the early summer, which will set out some of the possible approaches that could be taken and seek views on the merits of the issue.

### ***EU transition***

28. Responding to EU transition, as well as the legislative reform programme of the Government will be the Welsh Government's priority. That is clear.
29. The result of the referendum on the UK's membership of the European Union occurred after the publication of the Law Commission's final report, and the influence of European law on our constitutional arrangements was not directly considered. The likely need over coming years to repatriate and amend or replace European law is, however, relevant to any future longer-term commitment to codify Welsh law. Maintaining a system of saved (former) European law alongside domestic law will be particularly complex, and probably not sustainable over the long term. There is clearly an overlap between our aspirations to codify the law and what may become an unavoidable need to rationalise European law. This represents both a risk and an opportunity: on the one hand it significantly increases the size of the task, but on the other it would enable us to create more coherent and complete codes of domestic law within the devolved areas, by incorporating provisions currently set out in European law.

**Mick Antoniw AC/AM**  
**Y Cwnsler Cyffredinol**  
**Counsel General**

**24<sup>th</sup> April 2017**

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

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# Agenda Item 9

8 May 2017

## SL(5)088 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2017

### Procedure: Negative

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These Regulations govern the student loan liability of students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2017/2018.

These Regulations provide for up to £1,500 of each borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

**Parent Act:** Teaching and Higher Education Act 1998

**Date Made:** 28 March 2017

**Date Laid:** 30 March 2017

**Coming into force date:** 1 August 2017

## SL(5)089 – The Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017

### Procedure: Negative

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These Regulations apply where the Welsh Ministers are authorised to recover costs borne by them in connection with—

- (a) inquiries in relation to which the Welsh Ministers are entitled to recover their costs under or by virtue of section 250(4) of the Local Government Act 1972 (including compulsory purchase order inquiries to which that section is applied by section 5 of the Acquisition of Land Act 1981) or section 69(5) of the Land Drainage Act 1991 (“local inquiries”); and
- (b) qualifying procedures as defined by section 303A(1A) of the Town and Country Planning Act 1990 (independent examinations held in relation to local





development plans and inquiries in relation to consideration of objections to simplified planning zone schemes) (“qualifying procedures”).

These Regulations prescribe the standard daily amount which may be recovered by the Welsh Ministers for each day, or part of a day, on which—

- (a) a local inquiry sits or the person appointed to hold the local inquiry is otherwise engaged in work connected with it; or
- (b) the person appointed to hold a qualifying procedure is engaged in the holding of, or otherwise engaged on work connected with, the qualifying procedure.

**Parent Act:** Housing and Planning Act 1986

**Date Made:** 24 March 2017

**Date Laid:** 31 March 2017

**Coming into force date:** 5 May 2017

## SL(5)091 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017

**Procedure:** Negative

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These Regulations amend the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (“the 2012 Regulations”).

The main changes are—

- (1) amendments to the procedure in relation to applications referred to the Welsh Ministers under section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) and under that section as applied by sections 19 and 74(3) of the Act, including provision for an applicant to submit a full statement of case within a specified timescale if the applicant so chooses (regulation 4 which inserts a new regulation 11A into the 2012 Regulations);
- (2) amendments to the procedure in relation to appeals under section 20 of the Act to require:
  - (a) a notice of appeal to be accompanied by a full statement of case; and



- (b) the appellant to send a copy of the full statement of case to the local planning authority (regulation 5 which amends regulation 12 of the 2012 Regulations);
- (3) provision under section 21(4A) and (4B) of the Act (which were inserted by section 47(3) of the Planning (Wales) Act 2015) to—
  - (a) prescribe a circumstance under section 21(4A) in which an application may be varied once notice of appeal has been served; and
  - (b) provide for an application which is so varied to be subject to such further consultation as the Welsh Ministers consider appropriate (regulation 6 which inserts a new regulation 12B into the 2012 Regulations).

**Parent Act:** Planning (Listed Building and Conservation Areas) Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017

## SL(5)092 – The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017

**Procedure:** Negative

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These Regulations amend the Planning (Hazardous Substances) (Wales) Regulations 2015 (“the 2015 Regulations”).

The main changes are—

- (1) amendments to the procedure in relation to applications referred to the Welsh Ministers pursuant to a direction under section 20 of the Planning (Hazardous Substances) Act 1990 (“the PHSA”), including provision for an applicant to submit a full statement of case within a specified timescale if the applicant so chooses (regulation 4 which substitutes regulation 12 of the 2015 Regulations);
- (2) amendments to the procedure in relation to appeals under section 21 of the PHSA to require—
  - (a) a notice of appeal to be accompanied by a full statement of case; and



- (b) the appellant to send a copy of the full statement of case to the hazardous substances authority (regulation 5 which amends regulation 13 of the 2015 Regulations);.
- (3) provision under section 21(3E) and (3F) of the PHSA (which were inserted by section 47(4) of the Planning (Wales) Act 2015) to—
- (a) prescribe a circumstance under section 21(3E) in which an application may be varied once notice of appeal has been served; and
  - (b) provide for an application which is so varied to be subject to such further consultation as the Welsh Ministers consider appropriate (regulation 6 which inserts regulation 13A into the 2015 Regulations);
- (4) amendments to the procedure for appeals against hazardous substances contravention notices to require—
- (a) a full statement of case to be sent to the Welsh Ministers within a specified period; and
  - (b) the appellant to send a copy of the notice of appeal and full statement of case to the hazardous substances authority (regulation 7 which amends regulation 17 of, and Part 1 of Schedule 4 to, the 2015 Regulations).

**Parent Act:** Planning (Hazardous Substances) Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017



# SL(5)093 – The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017

## Procedure: Negative

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These Regulations amend the Town and Country Planning (Trees) Regulations 1999 (“the 1999 Regulations”).

Regulation 2 of the 1999 Regulations provides that a Tree Preservation Order must be in the form set out in the Schedule to those Regulations, or in a form substantially to the same effect.

Article 7 of the form of Tree Preservation Order set out in the Schedule to the 1999 Regulations (“the Order”) applies provisions of the Town and Country Planning Act 1990, including sections 78 and 79 of that Act, to consents under the Order and applications for such consent, subject to the adaptations and modifications mentioned in Part 1 of Schedule 2 to the Order. The provisions as so adapted and modified are set out in Part 2 of Schedule 2 to the Order.

These Regulations amend provisions in Part 1 and remove Part 2 of Schedule 2 to the Order. The effect of the amendments is to require—

- (a) a notice of appeal to be accompanied by a full statement of case comprised of a written statement containing full particulars of the appellant’s case and copies of supporting documents; and
- (b) the appellant to send a copy of both the notice of appeal and full statement of case to the authority which made the tree preservation order as soon as reasonably practicable.

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017



# SL(5)094 – The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017

## Procedure: Negative

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These Regulations amend the Town and Country Planning (Control of Advertisements) Regulations 1992 (“the 1992 Regulations”).

They amend the provisions in regulation 15 and Parts 3 to 5 of Schedule 4. Those provisions in the 1992 Regulations apply sections 78 and 79 of the Town and Country Planning Act 1990 (“the Planning Act”), as modified, to appeals in relation to applications for express consent and where a discontinuance notice is served under regulation 8 of the 1992 Regulations.

The effect of the amendments is to require—

- (a) a notice of appeal to be accompanied by a full statement of case comprised of a written statement containing full particulars of the appellant’s case and copies of supporting documents in the case of appeals—
  - (i) against the grant of express consent which is granted subject to conditions;
  - (ii) where a local planning authority has failed to determine an application for express consent; and
  - (iii) in relation to discontinuance notices; and
- (b) the appellant to serve on the local planning authority, as soon as reasonably practicable, a copy of the notice of appeal and, in the case of the appeals mentioned in paragraph (a) above, to also serve a copy of the full statement of case.

These Regulations also remove Part 4 of Schedule 4 which sets out sections 78 and 79 of the Planning Act as modified by the 1992 Regulations in relation to applications for express consent.

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017



Coming into force date: 5 May 2017

## SL(5)095 – The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017

### Procedure: Negative

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These Regulations revoke and replace with some changes the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003 (“the 2003 Regulations”).

The main changes made by these Regulations are—

- (1) the information to be included in an explanatory note to accompany every enforcement notice served by a local planning authority under section 172(2) of the Town and Country Planning Act 1990 (“the Planning Act”) is amended in light of the changes referred to in paragraph (2)(a) and (b) (regulation 7);
- (2) in relation to appeals to the Welsh Ministers under section 174(3) of the Planning Act or section 39(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”)—
  - (a) the appellant must provide a full statement of case;
  - (b) the time prescribed under section 174(4) of the Planning Act and section 39(4) of the Listed Buildings Act for submitting a statement in writing to the Welsh Ministers is amended;
  - (c) the appellant must as soon as reasonably practicable send a copy of the notice of appeal and full statement of case to the local planning authority (regulation 8);
- (3) in relation to appeals under section 208(2) of the Planning Act, a written notice of appeal indicating the grounds of appeal and stating the facts on which the appeal is based must be accompanied by a full statement of case (regulation 9);
- (4) provision is made in relation to the steps to be taken in connection with the bringing of an appeal to the Welsh Ministers under section 217 of the Planning Act (regulation 10). Broadly the steps to be taken are the same as in relation to an



appeal under section 174(3) of the Planning Act or section 39(2) of the Listed Buildings Act.

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017

## SL(5)096 – The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017

**Procedure:** Negative

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These Regulations establish a new procedure for referred applications and appeals in Wales.

These Regulations provide for the procedure in relation to:

- applications for planning permission, listed building consent, conservation area consent and hazardous substances consent referred to the Welsh Ministers for determination (“referred applications”).
- appeals to the Welsh Ministers in relation to planning permission, listed building consent, conservation area consent, hazardous substances consent, advertisement consent, certificates of lawfulness of existing or proposed use or development and consents under tree preservation orders.
- appeals to the Welsh Ministers in relation to enforcement notices, listed buildings enforcement notices, conservation area enforcement notices, hazardous substances contravention notices, advertisement discontinuance notices, tree replacement notices and notices concerning the maintenance of land (“enforcement appeals”).

These Regulations shorten the timescales for the appeal process. The main changes are as follows:

- the statutory instruments made at the same time as these Regulations require the appellant to submit a full statement of case with a notice of appeal. These



Regulations provide that the local planning authority must submit a full statement of case in relation to enforcement appeals and may elect to do so in relation to other appeals. The local planning authority's full statement of case must be received by the Welsh Ministers within 4 weeks of the Welsh Ministers' notification of receipt of appeal.

- the date of the hearing must be no later than 10 weeks, and the date of the inquiry must be no later than 18 weeks, after the Welsh Ministers notification of receipt of appeal. Where the Welsh Ministers consider this to be impracticable the date for the hearing or inquiry must be the earliest date which the Welsh Ministers consider is practicable.

These Regulations also provide for referred applications and appeals to the Welsh Ministers to be dealt with by a combination of procedures, rather than by means of only written representations, hearings or inquiries, where the Welsh Ministers consider it appropriate. The Welsh Ministers must make a determination as to the procedure by which proceedings are to be considered within 6 weeks of the Welsh Ministers' notification of receipt of appeal

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 5 April 2017

**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017

## SL(5)097 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017

**Procedure:** Negative

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This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”).

The main changes are—

- (1) amendments to the procedure in relation to applications referred to the Welsh Ministers pursuant to a direction under section 77 of the Town and Country Planning Act 1990 (“the 1990 Act”), including provision for an applicant to submit a





full statement of case within a specified timescale if the applicant so chooses (article 4 which substitutes article 13 of the 2012 Order).

- (2) amendments to the procedure in relation to appeals under section 78 of the 1990 Act to require—
  - (a) a notice of appeal to be accompanied by a full statement of case; and
  - (b) the appellant to send a copy of the full statement of case to the local planning authority (article 5 which amends article 26 of the 2012 Order).
- (3) provision for the procedure for appeals under section 195 of the 1990 Act (appeals against refusal or failure to give decision on application for a certificate of lawfulness of existing or proposed use or development) to—
  - (a) require a notice of appeal to be accompanied by a full statement of case;
  - (b) require the appellant to send a copy of the full statement of case to the local planning authority; and
  - (c) provide that an applicant who wishes to appeal to the Welsh Ministers against a refusal or failure to give a decision on an application for a certificate of lawfulness of existing use or development must do so within six months from the date of the notice of the decision or determination giving rise to the appeal (article 6 which inserts article 26B into the 2012 Order).
- (4) provision under section 78(4BA) and (4BB) and section 195(1DA) and (1DB) of the 1990 Act (which were inserted by section 47(1) and (2) of the Planning (Wales) Act 2015) to—
  - (a) prescribe a circumstance under sections 78(4BA) and 195(1DA) in which an application may be varied once notice of appeal has been served; and
  - (b) provide for an application which is so varied to be subject to such further consultation as the Welsh Ministers consider appropriate (article 7 which inserts article 26C into the 2012 Order).

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 5 April 2017



**Date Laid:** 11 April 2017

**Coming into force date:** 5 May 2017

## SL(5)099 – The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

### **Procedure: Negative**

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These Regulations prescribe the procedure for applications and proposals under sections 19 of, and Schedule 2 to, the Commons Act 2006.

They include provisions about:

- (a) the making, management and determination of applications and proposals to amend the registers;
- (b) fees that may be charged in relation to an application;
- (c) the registration authority's duties in connection with the publication of applications and proposals;
- (d) the holding of public inquiries and hearings and the cases where applications and proposals must be referred to an appointed person for determination (these include cases where the registration authority has an interest in the outcome of the application or proposal);
- (e) the award of costs in relation to certain applications.

They enable the Welsh Ministers to appoint persons as eligible to administer and determine applications made to, or proposals made by, a commons registration authority for the amendment of its registers.

**Parent Act:** Commons Act 2006

**Date Made:** 9 April 2017

**Date Laid:** 13 April 2017

**Coming into force date:** 5 May 2017



## SL(5)101 – The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017

### Procedure: Negative

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These Regulations implement Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effect of certain public and private projects on the environment. They also implement Council Directive 1992/43/EEC on the conservation of natural habitats and of wild flora and fauna insofar as those projects affect sites protected by that Directive.

In addition, these Regulations also revoke The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 (SI 2007/2933) and regulation 36 makes transitional provision in respect of remediation and stop notices services served under the revoked regulations.

**Parent Act:** European Communities Act 1972

**Date Made:** 20 April 2017

**Date Laid:** 24 April 2017

**Coming into force date:** 16 May 2017

## SL(5)103 – The Seed Potatoes (Wales) (Amendment) Regulations 2017

### Procedure: Negative

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These Regulations amend the Seed Potatoes (Wales) Regulations 2016 (“the 2016 Regulations”).

These Regulations implement Commission Implementing Directive (EU) 2016/317, by amending the requirements for the official label on basic and certified seed potatoes in the 2016 Regulations.

**Parent Act:** Plant Varieties and Seeds Act 1964

**Date Made:** 21 April 2017

**Date Laid:** 26 April 2017



Coming into force date: 18 May 2017





# Historic Environment Records in Wales: Compilation and Use

Statutory Guidance on how Local Authorities, National Park  
Authorities and Natural Resources Wales should use Historic  
Environment Records and Contribute to their Compilation



May 2017

## Statement of Purpose

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Historic environment records provide detailed information about the historic environment of a given area. The historic environment records in Wales have been created as a result of decades of research and investigation. They are maintained and updated for public benefit and use in accordance with national and international standards.

*Historic Environment Records in Wales: Compilation and Use* is statutory guidance which explains how certain public bodies in Wales:

- may contribute to the compilation of historic environment records and assist in keeping them up-to-date
- should make use of historic environment records in the exercise of their functions.

The public bodies are:

- local authorities in Wales
- National Park authorities in Wales
- Natural Resources Wales.

These bodies must have regard to this statutory guidance, which is issued by the Welsh Ministers under the powers in section 37 of the Historic Environment (Wales) Act 2016.<sup>1</sup>

Sections 35 and 36 of the Historic Environment (Wales) Act 2016 require the Welsh Ministers to compile and keep up to date a publicly accessible historic environment record for each local authority area in Wales.<sup>2</sup>

While this guidance has been prepared specifically for the bodies named in section 37 of the Act, it will be of relevance to a range of other public, voluntary and private sector bodies, and individuals with an interest in the historic environment of Wales.



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Cadw is the Welsh Government's historic environment service, working for an accessible and well-protected historic environment.

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

Cover photograph: Gwern Einion burial chamber is a scheduled monument in Gwynedd (© Crown copyright (2017), Visit Wales).

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## Introduction ↗

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The historic environment of Wales has been shaped by past generations. It highlights where we have come from and enhances our quality of life. The history that surrounds us gives us a sense of place and helps to define us as a nation. The historic environment is also a fragile, vulnerable, non-renewable and finite resource. Our ambition to provide effective protection and management of the historic environment relies on access to good quality, authoritative information.

Under the provisions of the Historic Environment (Wales) Act 2016 (the Act),<sup>3</sup> the Welsh Ministers must compile and keep up to date a historic environment record for each local authority area in Wales. They must also make the historic environment records publicly accessible, and provide advice and assistance to those wishing to retrieve and understand the information that they contain.

This guidance explains the role and responsibilities of the Welsh Government, the Welsh archaeological trusts, the public bodies named in the Act and the Royal Commission on the Ancient and Historical Monuments of Wales (the Royal Commission) with respect to historic environment records in Wales. It also explains how local authorities and National Park authorities in Wales, and Natural Resources Wales may contribute to historic environment records and how they should use these records in the exercise of their functions.

Although this guidance is aimed at the public bodies named in the Act, it has relevance to a wide range of other public sector bodies, and private and third sector organisations. It may also be of use to individuals and groups who use the historic environment records regularly for researching the heritage of their community, or as part of personal research or exploration.



# 1. Historic Environment Records ↵

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## 1.1 What are Historic Environment Records? ↵

The historic environment includes all aspects of our surroundings that have been built, formed or influenced by human activities from the earliest to most recent times. Historic environment records are the store for systematically organised information about the historic environment in a given area and provide an index to historic environment information held elsewhere. They are maintained and updated for public benefit and can be accessed by anyone.

The Welsh historic environment records contain and signpost information about historic landscapes, buildings, archaeological sites and finds. They also contain records of the investigation and management of the historic environment, such as archaeological excavations, historical studies and programmes of conservation. The content of the Welsh historic environment records represents decades of collection and collation of information drawn from a wide range of sources, including information from the general public and the results of archaeological fieldwork.

Key information contained within the Welsh historic environment records has been brought together into a digital database linked to a geographic information system (GIS) which allows users to see the textual information alongside mapping. The database is supported by associated reference material which may be digital or paper. This material can include aerial photographs, copies of early maps and antiquarian reports, characterisation studies, unpublished reports ('grey literature'), and other published and documentary sources. However, the historic environment records are not formal archives, unlike for example the National Monuments Record of Wales (see section 2.4 below) or the county records offices.

Historic environment records are a dynamic and constantly evolving resource which requires continuous maintenance and enhancement as new information about the historic environment comes to light. As such, historic environment records can never be a definitive record. Historic environment records need to be managed by appropriately qualified and dedicated staff that can help the public bodies named in the Act and the wider public in their use.

The baseline content required of historic environment records in Wales, as outlined in the Historic Environment (Wales) Act 2016,<sup>4</sup> is described in section 3.2.

## 1.2 What are Historic Environment Records Used For? ↵

Historic environment records provide access to information about the historic environment of Wales for public benefit and fulfil a wide variety of functions which include:

- advancing knowledge and understanding of the historic environment
- supporting the conservation, management and protection of the historic environment
- informing strategic policies and development plans

- informing development management decisions
- supporting heritage-led regeneration, environmental improvement and cultural tourism initiatives
- contributing to education and social inclusion
- promoting public participation in the exploration, appreciation and enjoyment of local heritage
- promoting and raising awareness of the value of historic place names.

Historic environment records are used daily by a broad range of stakeholders, including the public bodies named in the Act, as well as owners, developers, planners, researchers and the general public.

## 2. Roles and Responsibilities ↵

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### 2.1 The Welsh Ministers ↵

Under sections 35 and 36 of the Act, the Welsh Ministers have a duty to create and keep up to date a publicly accessible historic environment record for each local authority area in Wales.<sup>5</sup> Advice and assistance must be made available to those wishing to retrieve and understand the information that historic environment records contain.

It is for the Welsh Ministers to decide what information is contained in the historic environment records in accordance with the details of the content set out in section 35(2) of the Act. In practice, using formal agreements, the Welsh Ministers have delegated the delivery of this responsibility to the four Welsh archaeological trusts. The agreements set out the standards and benchmarks that each of the historic environment records is expected to meet.<sup>6</sup>

Under section 37 of the Act,<sup>7</sup> the Welsh Ministers must issue this guidance on the compilation and use of historic environment records to local and National Park authorities in Wales, and Natural Resources Wales.

### 2.2 The Welsh Archaeological Trusts ↵

The Welsh Ministers have chosen to discharge their duties under sections 35 and 36 of the Act through formal agreements with the four Welsh archaeological trusts — Clwyd-Powys, Dyfed, Glamorgan-Gwent and Gwynedd.

Each Welsh archaeological trust maintains a regional historic environment record. These records began as the sites and monuments records established in the 1970s. They were compiled to assist the trusts' work programmes and in response to the lack of archaeological information available to owners, developers and planners, and the consequent loss of archaeological remains through urban and rural development.

Together, these historic environment records now provide a comprehensive resource comprising nearly 300,000 individual records of archaeological investigations and historic assets and finds of all periods throughout Wales.

Although the records originated as archaeological datasets, in recent years they have expanded to include more information on other aspects of the historic environment, such as historic landscapes and historic buildings. The Welsh archaeological trusts are continuing to enhance the content of the records by working with others, including the public bodies named in the Act.

Online public access to the core information contained in the historic environment records is available through Archwilio.<sup>8</sup> However, users should contact the historic environment staff at the relevant archaeological trust for additional details on individual entries that may not be available via Archwilio. Furthermore, the historic environment staff at the trusts will also provide essential support and advice on the interpretation and use of the information held in the historic environment records.

The four regional historic environment records cover the following local authority areas:

- Clwyd-Powys historic environment record covers Denbighshire, Flintshire, Wrexham, Powys and part of Conwy
- Dyfed historic environment record covers Pembrokeshire, Carmarthenshire and Ceredigion
- Glamorgan-Gwent historic environment record covers Swansea, Neath Port Talbot, Rhondda Cynon Taff, Bridgend, Vale of Glamorgan, Cardiff, Merthyr Tydfil, Caerphilly, Blaenau Gwent, Monmouthshire, Torfaen and Newport
- Gwynedd historic environment record covers Isle of Anglesey, Gwynedd and part of Conwy.

Among other uses (see section 1.2 above), the Welsh archaeological trusts use the information held in the historic environment records to provide advice to local planning authorities on the preparation of local development plans and development management.

### 2.3 Local Authorities and National Park Authorities in Wales, and Natural Resources Wales ▾

Under section 37 of the Act, local and National Park authorities in Wales, and Natural Resources Wales must all pay regard to this statutory guidance on the compilation and use of historic environment records in Wales. These public bodies have an important role in the management and conservation of the historic environment and the way in which it is promoted, accessed and appreciated by the public. These functions depend on access to good quality, authoritative information about the historic environment, such as that provided by the historic environment records.

It is vital that these public bodies make an effective contribution to the content of the historic environment records (see sections 3.1 and 3.2). Consequently, these public bodies have a key role in the compilation of the historic environment records.

They also have responsibility for their use in the exercise of their functions, which is described in section 4. In order for this to be achieved, periodic liaison meetings between the public bodies and the relevant archaeological trust(s) will be necessary.

Information which is relevant to the historic environment may also be held in formal archives run by local authorities, such as the county records offices, as well as in files relating to general casework affecting the historic environment.

## 2.4 The Royal Commission on the Ancient and Historical Monuments of Wales ▾

The Royal Commission<sup>9</sup> was established in 1908 and currently derives its role and responsibilities from its Royal Warrant of 2000. It works as a Welsh Government Sponsored Body (WGSB) and receives its core funding from the Welsh Government.

Since 1964, the Royal Commission has been responsible for the curation of the National Monuments Record of Wales. This is the national public archive and inventory for the historic environment of Wales, which is comparable to similar archives in England and Scotland. It holds records generated by the Royal Commission's investigative activities as well as records contributed by a wide range of other organisations and private individuals. The National Monuments Record of Wales is officially recognised as a place of deposit for public records under the Public Records Act 1958.<sup>10</sup> It contains original photographs, drawings and documents relating to the historic environment of Wales. The National Monuments Record of Wales is the primary deposit for original archival material and documents relating to the historic environment of Wales.

The Royal Commission also curates the record of historic maritime sites for the territorial waters of Wales, which includes offshore shipping and aviation casualties, and areas of high marine archaeological potential. On behalf of the Welsh Ministers, the Royal Commission also has a specific responsibility for maintaining the list of historic place names in Wales and the inventory of historic battlefields, and for making this information available through the historic environment records.

Under its operational arrangements with the Welsh Government, the Royal Commission has responsibility for monitoring the standards and service levels of the historic environment records.<sup>11</sup> This includes coordinating and validating audits on a five-year cycle which review data quality, assess performance against specified indicators and identify areas for enhancement. A summary of the audit findings is published on the website of the Welsh Government's Historic Environment Service (Cadw).<sup>12</sup>

## 2.5 How Do the Historic Environment Records Relate to Other Records? ▾

There are other sources of information about the historic environment of Wales, some of which contribute to the historic environment records. The Welsh Government is the primary source for records relating to monuments and buildings in State care and designated historic assets of national importance or special interest, including listed

buildings, scheduled monuments, designated wrecks and registered historic parks, gardens and landscapes. Cof Cymru — National Historic Assets of Wales, which is maintained by Cadw, gives online public access to mapping and descriptive information for these historic assets.<sup>13</sup>

The Royal Commission maintains the National Monuments Record of Wales, and online public access is provided through the Coflein website.<sup>14</sup> There is a formal working relationship between the National Monuments Record of Wales and the historic environment records with a regular exchange of core information.

Other organisations also hold important information relating to the historic environment including Amgueddfa Cymru — National Museum Wales, and regional and local museums, who hold records relating to the archaeological artefacts and historic collections in their care. The National Trust holds records relating to the historic assets located on their landholdings and these are also available online.<sup>15</sup>

The historic environment records draw upon all of these and other sources. A formal Strategic Framework for Records Relating to the Historic Environment of Wales has been established between the principal record holders, including the historic environment records, to facilitate regular data sharing and collaboration.<sup>16</sup>

On behalf of the framework partners, the Royal Commission maintains and develops Historic Wales<sup>17</sup> as an online gateway to national and regional records. This includes an integrated map showing the locations of all the archaeological and historic sites recorded in the databases maintained by the framework partners.

## 3. The Content and Compilation of Historic Environment Records in Wales ↵

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### 3.1 Keeping Historic Environment Records in Wales Up to Date ↵

Historic environment records require active management if they are to reflect the changing nature of the historic environment and our understanding of its significance.<sup>18</sup> Historic environment records must be kept up to date with accurate information, including:

- new discoveries and interpretations
- new and amended statutory designations
- latest research and publications
- records and outcomes of new investigations
- changes to the historic assets already recorded.

Such information will come from a variety of sources, ranging from chance finds by members of the public and unexpected discoveries by property owners, developers and land managers to systematic investigations undertaken as part of national surveys, university-led research, developer-funded fieldwork and recording, community projects or private research.

There should be no temporal limits on the information recorded in historic environment records: they should include data relating to all periods, from the earliest human activity to the present day. The geographical limit of the historic environment record for each local authority area will be defined by the administrative boundary of the local authority. In the case of local authority areas that include coastline, the seaward extension of a historic environment record's geographic coverage beyond the administrative boundary will allow more effective management of the marine and coastal historic environment.

There has always been a strong positive relationship between the Welsh archaeological trusts and all of the public bodies named in the Act, and the ongoing roles and responsibilities are based on strong existing foundations. The public bodies continue to play a role in making sure that the historic environment records are as up to date as possible. In some cases, a public body will have a responsibility for ensuring that the historic environment records include new or updated information for which that body is directly responsible, such as information relating to conservation areas and local lists, where they exist.

Progress on contributing to and enhancing the historic environment records should be included in the discussion at the periodic liaison meetings between the public bodies and the relevant archaeological trust(s) referred to in section 2.3 above. As part of this discussion, agreement will need to be reached regarding the format, procedure and timescale for the provision of any new information that can usefully be added to the historic environment records. The outcome of these discussions will contribute to the annual work plans of the archaeological trusts. In this way, the historic environment records will continue to expand and enhance their coverage of the historic environment beyond their strong existing archaeological base.

### 3.2 The Content of Historic Environment Records in Wales and the Role of Public Bodies in their Compilation ▯

This section provides a list of what historic environment records are expected to contain under section 35(2) of the Act.<sup>19</sup> The different elements are grouped here to reflect how local and National Park authorities, and Natural Resources Wales must or should contribute to the compilation of historic environment records and assist in keeping them up to date.

### 3.2.1 Historic Assets that have Statutory Protection or are Registered under the 1979 or 1990 Acts<sup>20</sup> ⇐

- (a) Details of every building in the authority's area which is included in a list compiled or approved by the Welsh Ministers under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9).<sup>21</sup>**
- (b) Details of every conservation area in the authority's area which is designated under section 69 of that Act.<sup>22</sup>**
- (c) Details of every monument in the authority's area which is included in the Schedule compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46).<sup>23</sup>**
- (d) Details of each of the grounds in the authority's area which are included in the register of historic parks and gardens compiled and maintained by the Welsh Ministers under section 41A of that Act.<sup>24</sup>**

Cadw, on behalf of the Welsh Ministers, is responsible for identifying and designating listed buildings (a), scheduled monuments (c) and registered historic parks and gardens<sup>25</sup> (d). The definitive and up-to-date lists of each of these categories of historic asset are managed by Cadw. The historic environment records must contain details of all of the assets in these groups as and when they are provided by Cadw.

Local planning authorities are responsible for defining and designating conservation areas (b). These authorities must provide details of all conservation areas for inclusion in the historic environment records. This should include links to information relating to conservation area appraisals.

**Local planning authorities must provide details of all conservation areas for inclusion in the relevant historic environment record.**

### 3.2.2 Conflict Sites ⇐

- (e) Details of every conflict site in the authority's area which the Welsh Ministers consider to be of historic interest.**

Section 35(3) of the Act defines a 'conflict site' as a battlefield or a site on which some other conflict involving military forces took place, or a site on which significant activities relating to a battle or other such conflict occurred.<sup>26</sup>

On behalf of the Welsh Ministers, the Royal Commission has compiled an inventory of historic battlefields in Wales.<sup>27</sup> The historic environment records will contain details of the latest information from this inventory. The historic environment records should also include links to the online inventory that is maintained by the Royal Commission.

The public bodies named in the Act may have additional information about conflict sites. This information should be provided to the Royal Commission for possible inclusion in the inventory.

**The public bodies named in the Act should provide the Royal Commission with details of any conflict site that might be considered for inclusion in the historic environment records.**

### 3.2.3 Historic Landscapes ↵

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**(f) Where a public authority (whether by itself or jointly with other persons) maintains a list of historic landscapes in Wales, details of every historic landscape in the local authority's area which is included in the list.**

A register of historic landscapes has been compiled jointly by Cadw, the International Council on Monuments and Sites UK (ICOMOS (UK)) and the Countryside Council for Wales (now part of Natural Resources Wales).<sup>28</sup>

On behalf of the Welsh Ministers, the Welsh archaeological trusts have carried out detailed historic landscape characterisation studies of each of these registered historic landscapes. The historic environment records must contain details of each registered historic landscape, along with details of the associated characterisation work and links to the online datasets that are hosted by the Welsh archaeological trusts.

**Where a public body named in the Act maintains its own list of historic landscapes, details should be included in the historic environment records.**

### 3.2.4 World Heritage Sites ↵

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**(g) Details of every World Heritage Site in the authority's area**

The historic environment records must contain details of each World Heritage Site. The historic environment records should provide links to the most up-to-date management plans for World Heritage Sites and any associated supplementary planning guidance.

**Where a local authority or National Park authority is responsible for a World Heritage Site management plan or for any supplementary planning guidance, then it should provide the historic environment records with appropriate links to that plan or guidance.**



### 3.2.5 Other Sites of Historic, Archaeological or Architectural Interest ↵

**(h) Details of every other area or site or other place in the authority's area which the authority or the Welsh Ministers consider to be of local historic, archaeological or architectural interest.**

The majority of historic assets within a local authority's area do not have statutory protection. However, they all contribute to its historic, archaeological or architectural character and they might be of national, regional or local importance.

Records might relate to unscheduled archaeological sites, unlisted historic buildings or structures, historic parks and gardens, battlefields and landscapes that do not appear on the relevant registers or inventories, or locations with important palaeo-environmental evidence. Records might also include locations that do not have any visible physical evidence, but might be associated with a historical, cartographic or documentary reference, or the discovery of an archaeological artefact.

In the case of coastal local authorities, the historic environment records should contain information on maritime heritage of historic, archaeological or architectural interest. The historic environment records should link to the Welsh maritime record, maintained by the Royal Commission, which includes wreck sites and offshore areas of high archaeological potential.

Local authorities have a key role in contributing information about undesignated assets to the historic environment records. Local authorities often collect additional information relating to the historic environment, especially about historic buildings. If the historic environment records are to be comprehensive sources of information, it is vital that they are supplied with new information promptly about all historic assets, including those that are of local historic, archaeological and architectural interest. This should include information relating to local historic assets that may be identified formally during the course of the planning process, as well as other activities.

The National Park authorities and Natural Resources Wales should provide the historic environment records with information about undesignated historic assets to make sure that the historic environment records continue to be both comprehensive and informative for their work. For example, this might include details of historic assets discovered or investigated as a result of management or public access programmes.

**The public bodies named in the Act should provide details of any other area or site, or other place that they consider to be of local historic, archaeological or architectural interest for inclusion in the historic environment records.**

**Where a local or National Park authority maintains a list of historic assets of special local interest, they must provide the latest details of all entries on the list for inclusion in the historic environment records.**

### 3.2.6 Historic Character ↴

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**(i) 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.**

The historic environment records must include any historic landscape characterisation (see also (f) above) that has been undertaken, but also any characterisation that has been carried out in townscapes or seascapes. Cadw has undertaken a programme of historic characterisation of a number of historic towns across Wales. Each historic environment record should contain links to any characterisation studies relevant to its area.

**Where a public body named in the Act has collected information about the historic, archaeological or architectural development of an authority area, or part of an authority area (such as characterisation studies), then they should provide details for inclusion within the historic environment records, including links to further details and published information, including the LANDMAP historic and cultural landscape layers.**

### 3.2.7 Relevant Investigations ↴

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**(j) Details of relevant investigations carried out in the authority's area and of the findings of those investigations.**

The historic environment records contain details of relevant historical or archaeological investigations, including the findings of those investigations. Examples might include desk-based assessments, historic analysis, historic building recording, topographic or geophysical surveys and archaeological interventions (including surface artefact collections, test pitting, trial trenching, archaeological excavation and palaeo-environmental sampling). Some investigations may be non-archaeological in nature but nevertheless reveal relevant information, such as geo-technical surveys. Many of these investigations are carried out by individuals, research institutions, communities or as a result of other funded programmes (such as the Heritage Lottery Fund). However, many are carried out by (or at the instigation of) the public bodies named in the Act.

All of the public bodies named in the Act have a role in providing details of such investigations for inclusion in the historic environment records, subject to any copyright restrictions. Such investigations might be undertaken either directly by the public authority itself or carried out on its behalf or at its request. This might include work undertaken by or on behalf of Natural Resources Wales to manage forestry or woodlands, or environmental management schemes. It might also include work, relating to the historic environment, undertaken as a consequence of the planning process. Those undertaking work of this kind should be made aware of the need to supply the relevant findings to the historic environment records.

**The public bodies named in the Act should provide details of investigations of the historic environment, either undertaken directly by the public body itself or carried out on its behalf, for inclusion in the historic environment records, subject to any copyright restrictions. This might include investigations to support environmental management schemes or to support the planning process.**

### 3.2.8 Historic Place Names ↵

**(k) A means of accessing details of every historic place name in the authority's area which is included in the list compiled and maintained under section 34 of the Historic Environment (Wales) Act 2016.<sup>29</sup>**

Historic place names, whether of geographic features, settlements or individual properties, can provide a rich source of information about the historical development of a community and contribute to identity, a sense of place and belonging.

The Royal Commission maintains a list of historic place names on behalf of the Welsh Ministers.<sup>30</sup> In compiling this list, the Royal Commission draws upon the information contained in historic mapping, but also seeks the advice of language and place name experts. This is an evolving list and details of every place name on the list will be accessible through the historic environment records.

**The public bodies named in the Act should provide the Royal Commission with any information that will contribute to the ongoing development of the list of historic place names.**

## 4. Making Use of Historic Environment Records in Wales ↵

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This section considers how the public bodies named in the Act should use the historic environment records in the exercise of their functions. However, it should be recognised that the historic environment records are not simply passive sources of information for use by the public bodies: they all employ personnel experienced in the management and interpretation of the records. For example, these staff can help users to interpret the specialist data within the record and discuss the requirements for data deposition, exchange and collation, and the use of terminology. In particular, it is important that users should not rely solely on the baseline data contained within Archwilio. The archaeological trusts hold additional information and direct contact with historic environment record staff will be vital in assisting the public bodies in the exercise of their functions.

The compilation and use of information is also a two-way process. The information held in the historic environment records can benefit individual projects, along with the support and advice of the record staff. But these projects will also generate new or enhanced information that needs to be fed back into the records. This 'virtuous circle' of drawing on information from the historic environment records and then enhancing those records with new information generated, creates dynamic and ever improving historic environment records which benefit from the positive partnership established with stakeholders.

### 4.1 Informing Strategic Policies and Plans ↵

The historic environment records should be used as a key evidence base to inform a wide variety of national, regional and area strategic policies and plans; for example, local well-being plans that are required by the Public Service Boards under the provisions of the Well-being of Future Generations (Wales) Act 2015, Area Statements under the provisions of the Environment (Wales) Act 2016,<sup>31</sup> or National Park management plans.

**The public bodies named in the Act should use the historic environment records as key sources of evidence so that they can take account of the historic environment in the formulation of strategic policies and plans.**

## 4.2 Informing Development Plans ⇐

*Planning Policy Wales* identifies the historic environment records as key sources of information that must be used during the formulation of development plans by local planning authorities.<sup>32</sup> When preparing a local development plan, local planning authorities are required to undertake a Strategic Environmental Assessment and a Sustainability Appraisal. An assessment of the cultural heritage is one of the baseline studies in this process and this should be supported by the information in the historic environment records, which provides a key up-to-date evidence base.<sup>33</sup>

**Local planning authorities must use the historic environment records as a key source of evidence in the formulation of development plans.**

## 4.3 Informing Development Management Decisions ⇐

The historic environment records are key sources of information that should be used to support the planning process, including the determination of planning applications. The information held in the historic environment records supports a proper consideration of the impact of a proposal on the historic environment, including advice on schemes to avoid or mitigate any adverse impacts.

**Local planning authorities should take account of the information held in the historic environment records in the determination of planning applications.**

## 4.4 Informing Conservation and Management Projects ⇐

The public bodies named in the Act have responsibilities for the management and conservation of the historic environment. This can be the conservation of historic assets for which they are responsible, such as historic buildings, or parks and gardens. The management of the historic environment might also form part of a wider conservation programme focused on aspects of the natural environment.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence when considering conservation and management projects that have an impact on the historic environment.**

## 4.5 Informing Adaptive Responses to the Impact of Climate Change ↵

The public bodies named in the Act have a responsibility to respond to the impact of climate change; for example, through flood alleviation schemes or adapting historic assets to become more resilient.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence when considering adaptive responses to the impact of climate change.**

## 4.6 Informing the Naming and Renaming of Places ↵

The public bodies named in the Act have a responsibility for naming and renaming places for which they are responsible. In addition, local authorities have a statutory role in considering proposals to name new places or streets, and applications to change the names of streets and properties.

**All of the public bodies named in the Act should take account of the list of historic places names, which can be accessed through the historic environment records, when considering the naming and renaming of streets, properties and other places, either directly or by another party.**

**Local authorities should take account of the list of historic place names in the exercise of their statutory role in the naming and renaming of streets and properties (see Annex).**

## 4.7 Informing Heritage-led Regeneration ↵

The historic environment can be an important driver for economic regeneration within both our towns and countryside. The success of such projects needs to be founded on good quality, authoritative information.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence to support and inform heritage-led regeneration projects and programmes. Identifying what is distinctive about a locality through the use of characterisation studies can be an important first step in such an initiative.**

#### 4.8 Supporting Cultural Tourism and Economic Development ↵

The role of the historic environment in supporting the tourism industry is well documented.<sup>34</sup> It is an important driver for economic growth with the potential for significant job creation. The public bodies named in the Act play an important role in promoting tourism, either directly or indirectly. The historic environment records provide a key evidence base to support these functions.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence to support and inform cultural tourism initiatives. For example, the historic environment records can help inform local authority tourism initiatives that promote visits to historic town centres or countryside. Natural Resources Wales can use the historic environment records to inform the promotion and enjoyment of Wales's woodlands and forestry.**

#### 4.9 Supporting Education and Social Inclusion ↵

The historic environment is increasingly being used as a tool to support community cohesion and lifelong learning. The past provides a sense and pride of place, and offers opportunities for formal and informal learning.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence to support and inform lifelong learning and community cohesion projects. For example, local education authorities can use the historic environment records to inform curriculum activities that focus on local communities and a local sense of place.**

#### 4.10 Supporting Public Participation in the Exploration, Appreciation and Enjoyment of Local Heritage ↵

The historic environment records can provide an important tool to support active participation in the historic environment, informing heritage trails, local conservation projects, and the work of heritage and civic societies.

**All of the public bodies named in the Act should use the information held in the historic environment records as a key source of evidence to encourage active public participation and engagement with the historic environment.**

## 4.11 Advancing Knowledge and Understanding <sup>17</sup>

The historic environment records provide a key source of information for a wide range of research projects — from family history studies to major university-based research projects.

**The public bodies named in the Act should use the information held in the historic environment records as a key source of evidence to support and inform programmes of research and understanding — both those relating directly and indirectly to the historic environment.**



## Annex ↵

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### Guidance for Local Authorities on the Use of the List of Historic Place Names which can be Accessed through the Historic Environment Records ↵

The list of historic place names, which can be accessed through the historic environment records, will assist local authorities in the consideration of applications for the naming and renaming of streets and properties.

Current legislation (the Towns Improvement Clauses Act 1847<sup>35</sup> and the Public Health Act 1925<sup>36</sup>) regulates the logical and consistent naming and numbering of streets and properties to support postal and emergency services.

All local authorities in Wales should have policies on the naming and numbering of streets and properties. They should set out clearly the principles that govern the assignment of names and numbers to new streets and properties, and the handling of any requests to change names. The importance of historic place names in the local historic environment should be recognised in these policies, and their continuing use should be encouraged either as the basis for new naming or through the retention of existing names.

Any proposal to change a property name that appears in its official address requires a formal application to the local authority. If the proposed name change might lead to confusion, for example, by replicating an existing name in the same locality, the local authority will refuse the application. If the proposal is acceptable, the local authority will make the appropriate change to the Local Land and Property Gazetteer.

When considering applications for a change to a property name that appears in an official address, the local authority should now also check the proposal against the list of historic place names. This can be achieved through a simple search of the list by postcode or national grid reference, either via the authority's own GIS system (if the list dataset has been downloaded) or by consulting the list online.<sup>37</sup> If there is good evidence that the property has a historic name that has appeared on historic mapping, then the local authority should ask the applicant to reconsider the proposed change and retain, or perhaps adopt, the historic name.

Some local authorities in Wales (Ceredigion, Gwynedd and Anglesey) already employ this policy and evidence suggests that it is effective in encouraging the continued use of historic place names in postal addresses.

Local authorities have the responsibility for the naming of new streets that will need to be recorded in the Local Land and Property Gazetteer. The Welsh Government encourages local authorities to employ historic place names as the basis for the naming of new streets or other developments whenever possible. When considering an application from a developer for new place naming, the local authority should consult the list of historic place names. If there is an appropriate historic name (for example, a name deriving from a historic field name or settlement name), then the developer will be informed and encouraged to use it. The final decision on the naming of a street rests with the local authority.

Of course, the list of historic place names is fully accessible to the public, so individual property owners and developers alike will be encouraged to use it as a resource prior to submitting an application for place naming or renaming to the local authority.

## References ↗

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- 1 Historic Environment (Wales) Act 2016, section 37 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 2 Historic Environment (Wales) Act 2016, sections 35–36 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 3 Historic Environment (Wales) Act 2016, sections 35–37 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 4 Historic Environment (Wales) Act 2016, section 35 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 5 Historic Environment (Wales) Act 2016, sections 35–36 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 6 *Historic Environment Records in Wales: Standards and Benchmarks* ↗  
<http://cadw.gov.wales/historicenvironment/recordsv1/?lang=en>
- 7 Historic Environment (Wales) Act 2016, section 37 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 8 Archwilio ↗  
[www.archwilio.org.uk](http://www.archwilio.org.uk)
- 9 The Royal Commission on the Ancient and Historical Monuments of Wales ↗  
[www.rcahmw.gov.uk](http://www.rcahmw.gov.uk)
- 10 Public Records Act 1958 ↗  
<http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51>
- 11 *Historic Environment Records in Wales: Standards and Benchmarks* ↗  
<http://cadw.gov.wales/historicenvironment/recordsv1/?lang=en>
- 12 Cadw is the Welsh Government's historic environment service working for an accessible and well-protected historic environment for Wales ↗  
[www.cadw.wales.gov.uk](http://www.cadw.wales.gov.uk)  
Summary audit of historic environment records in Wales  
<http://cadw.gov.wales/historicenvironment/recordsv1/?lang=en>
- 13 Cof Cymru – National Historic Assets of Wales ↗  
<http://cadw.gov.wales/historicenvironment/recordsv1/cof-cymru/?lang=en>

- 14 Coflein ↗  
[www.coflein.gov.uk](http://www.coflein.gov.uk)
- 15 National Trust Heritage Records Online ↗  
<https://heritagerecords.nationaltrust.org.uk>
- 16 A Strategic Framework for Records Relating to the Historic Environment of Wales ↗  
<http://rcahmw.gov.uk/discover/strategic-framework/>
- 17 Historic Wales ↗  
[www.historicwales.gov.uk](http://www.historicwales.gov.uk)
- 18 For significance, refer to *Conservation Principles for the Sustainable Management of the Historic Environment in Wales*, Cadw, Welsh Assembly Government, 2011 ↗  
<http://cadw.gov.wales/historicenvironment/conservation/conservationprinciples/?lang=en>
- 19 Historic Environment (Wales) Act 2016, section 35(2) ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>  
The letters in the boxed sections refer to asset types as listed in section 35(2) of the Act.
- 20 Planning (Listed Buildings and Conservation Areas) Act 1990 ↗  
<http://www.legislation.gov.uk/ukpga/1990/9/contents>  
Ancient Monuments and Archaeological Areas Act 1979  
<http://www.legislation.gov.uk/ukpga/1979/46/contents>
- 21 Planning (Listed Buildings and Conservation Areas) Act 1990, section 1 ↗  
<http://www.legislation.gov.uk/ukpga/1990/9/section/1>
- 22 Planning (Listed Buildings and Conservation Areas) Act 1990, section 69 ↗  
<http://www.legislation.gov.uk/ukpga/1990/9/section/69>
- 23 Ancient Monuments and Archaeological Areas Act 1979, section 1 ↗  
<http://www.legislation.gov.uk/ukpga/1979/46/section/1>
- 24 Ancient Monuments and Archaeological Areas Act 1979, section 41A ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/2/crossheading/historic-parks-and-gardens>
- 25 Section 41A of the Historic Environment (Wales) Act 2016 is not currently in force. ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/2/crossheading/historic-parks-and-gardens>
- 26 Historic Environment (Wales) Act 2016, section 35(3) ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/crossheading/historic-environment-records>
- 27 The Inventory of Historic Battlefields in Wales ↗  
<http://battlefields.rcahmw.gov.uk/>
- 28 ICOMOS UK ↗  
[www.icomos-uk.org](http://www.icomos-uk.org);  
Natural Resources Wales  
[www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk)

- 29 Historic Environment (Wales) Act 2016, section 34 ↗  
<http://www.legislation.gov.uk/anaw/2016/4/part/4/prospective>
- 30 List of Historic Place Names in Wales ↗  
<https://historicplacenames.rcahmw.gov.uk/>
- 31 Well-being of Future Generations (Wales) Act 2015, section 39 ↗  
<http://www.legislation.gov.uk/anaw/2015/2/section/39/enacted>  
Environment Act (Wales) Act 2016, section 11  
<http://www.legislation.gov.uk/anaw/2016/3/section/11/enacted>
- 32 *Planning Policy Wales* (Edition 9), Chapter 6: The Historic Environment, para. 6.4.3 ↗  
<http://gov.wales/topics/planning/policy/ppw/?lang=en>
- 33 *Planning Policy Wales* (Edition 9), Chapter 6: The Historic Environment, para. 6.4.4 ↗  
<http://gov.wales/topics/planning/policy/ppw/?lang=en>
- 34 Valuing the Welsh Historic Environment, 2010 ↗  
<http://cadw.gov.wales/about/partnershipsandprojects/research/5273011/?lang=en>
- 35 Towns Improvement Clauses Act 1847 ↗  
<http://www.legislation.gov.uk/ukpga/Vict/10-11/34/introduction>
- 36 Public Health Act 1925 ↗  
<http://www.legislation.gov.uk/ukpga/Geo5/15-16/71/contents>
- 37 List of Historic Place Names in Wales ↗  
<https://historicplacenames.rcahmw.gov.uk/>

## Further Information ↗

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### Legislation and Planning

Environment (Wales) Act 2016

<http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

Historic Environment (Wales) Act 2016

<http://www.legislation.gov.uk/anaw/2016/4/contents>

Well-being of Future Generations Act (Wales) 2015

<http://www.legislation.gov.uk/anaw/2015/2/contents>

Welsh Language (Wales) Measure 2011

<http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>

*Planning Policy Wales* (Edition 9), Chapter 6: The Historic Environment

<http://gov.wales/topics/planning/policy/ppw/?lang=en>

*Technical Advice Note 24: The Historic Environment*

<http://gov.wales/topics/planning/policy/tans/?lang=en>

*Development Management Manual*

<http://gov.wales/topics/planning/policy/development-management-manual/?lang=en>

### Historic Environment Records in Wales

*Historic Environment Records in Wales: Standards and Benchmarks*

<http://cadw.gov.wales/historicenvironment/recordsv1/?lang=en>

A Strategic Framework for Records Relating to the Historic Environment of Wales

<http://rcahmw.gov.uk/discover/strategic-framework/>

### Records in Wales

**Archwilio** — provides online public access to baseline information in the historic environment records. Archwilio is maintained and supported with further information held by the Welsh archaeological trusts.  
[www.archwilio.org.uk](http://www.archwilio.org.uk)

**Cof Cymru** — Cadw's online record of the national historic assets of Wales, which includes listed buildings, scheduled monuments, protected wrecks, World Heritage Sites and registered historic landscapes. Registered historic parks and gardens will be added to Cof Cymru during 2018.  
<http://cadw.gov.wales/historicenvironment/recordsv1/cof-cymru/?lang=en>

**Coflein** — the online catalogue for the National Monuments Record of Wales, the national archive collection of information about the historic environment of Wales.  
<http://www.coflein.gov.uk/>

**Cynefin** — historic tithe maps providing a very useful source of information relating to the historic environment.

<http://cynefin.archiveswales.org.uk/>

**Historic Wales** — an online gateway to national and regional historic environment records.

<http://historicwales.gov.uk>

**LANDMAP** Methodology Historic Landscapes & Cultural Landscapes (2016)

<https://naturalresources.wales/media/677812/historic-landscape-landmap-methodology-2016.pdf>

<http://www.naturalresources.wales/media/677808/cultural-landscape-landmap-methodology-2016.pdf>

<http://landmap-maps.naturalresources.wales/> online resource to access maps and surveys

LANDMAP datasets are also published for download for use in a geographic information system (GIS) on

<http://lle.wales.gov.uk/Catalogue?lang=en&text=landmap>

**List of Historic Place Names in Wales** — records the various forms and spellings used for the names of topographical features, communities, thoroughfares, structures and other aspects of the landscape recorded in sources that predate the First World War.

<https://historicplacenames.rcahmw.gov.uk/>

**National Trust Heritage Records Online** — provides information on historic assets located on National Trust landholdings.

<https://heritagerecords.nationaltrust.org.uk/>

**The Inventory of Historic Battlefields in Wales**

<http://battlefields.rcahmw.gov.uk/>

## Contacts

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### **Welsh Government**

Historic Environment Service (Cadw)  
Plas Carew, Unit 5/7 Cefn Coed, Parc Nantgarw, Cardiff CF15 7QQ  
Tel. 03000 256000  
[cadw@wales.gsi.gov.uk](mailto:cadw@wales.gsi.gov.uk)  
[www.cadw.wales.gov.uk](http://www.cadw.wales.gov.uk)

### **Royal Commission on the Ancient and Historical Monuments of Wales**

Ffordd Penglais, Aberystwyth, Ceredigion, SY23 3BU  
Tel. 01970 621200  
[nmr.wales@rcahmw.gov.uk](mailto:nmr.wales@rcahmw.gov.uk)  
[www.rcahmw.gov.uk](http://www.rcahmw.gov.uk)

National Monuments Record of Wales  
[nmr.wales@rcahmw.gov.uk](mailto:nmr.wales@rcahmw.gov.uk)  
[www.coflein.gov.uk](http://www.coflein.gov.uk)

You can arrange to visit the public search room in Aberystwyth where staff will explain the resources available in the National Monuments Record of Wales.

### **Local Planning Authorities**

Local planning authorities' conservation officers and (for where proposals require planning permission) planning officers can be contacted via the relevant local authority website.

### **National Park Authorities**

National Park authorities' conservation officers can be contacted via the relevant website.

Brecon Beacons National Park Authority  
<http://www.beacons-mpa.gov.uk/>

Pembrokeshire Coast National Park Authority  
<http://www.pembrokeshirecoast.org.uk/default.asp?PID=4>

Snowdonia National Park Authority  
<http://www.eryri-mpa.gov.uk/>

### **Natural Resources Wales**

c/o Customer Care Centre, Ty Cambria, 29 Newport Road, Cardiff CF24 0TP  
Tel: 0300 065 3000  
[enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)  
<http://naturalresources.wales/>

Natural Resources Wales can provide information and advice on using LANDMAP historic and cultural landscape information and seascapes.

### **Welsh Archaeological Trusts**

Clwyd-Powys Archaeological Trust  
41 Broad Street, Welshpool SY21 7RR  
Tel. 01938 553670  
[trust@cpat.org.uk](mailto:trust@cpat.org.uk)  
[www.cpat.org.uk](http://www.cpat.org.uk)

Dyfed Archaeological Trust  
Corner House, 6 Carmarthen Street, Llandeilo  
SA19 6AE  
Tel. 01558 823121  
[info@dyfedarchaeology.org.uk](mailto:info@dyfedarchaeology.org.uk)  
[www.dyfedarchaeology.org.uk](http://www.dyfedarchaeology.org.uk)

Glamorgan-Gwent Archaeological Trust  
Heathfield House, Heathfield, Swansea SA1 6EL  
Tel. 01792 655208  
[enquiries@ggat.org.uk](mailto:enquiries@ggat.org.uk)  
[www.ggat.org.uk](http://www.ggat.org.uk)

Gwynedd Archaeological Trust  
Craig Beuno, Garth Road, Bangor LL57 2RT  
Tel. 01248 352535  
[gat@heneb.co.uk](mailto:gat@heneb.co.uk)  
[www.heneb.co.uk](http://www.heneb.co.uk)



# SL(5)98 – Historic Environment Records in Wales: Compilation and Use

## Background and Purpose

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This is statutory guidance issued by the Welsh Ministers under section 37 of the Historic Environment (Wales) Act 2016. It is guidance for local authorities, national park authorities and Natural Resources Wales about using historic environment records and contributing to the compilation of historic environment records.

## Procedure

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None, but the guidance must be laid before the Assembly.

## Scrutiny under Standing Order 21.7

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The guidance is not a statutory instrument so the Committee is not reporting under Standing Order 21.2 or 21.3.

The Committee has considered and reported on the guidance under:

- Standing Order 21.7(i): as subordinate legislation laid before the Assembly;
- Standing Order 21.7(v): as a legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

## Reporting points

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The title to the guidance states (emphasis added):

“Statutory Guidance on how Local Authorities, National Park Authorities and Natural Resources Wales **should** use Historic Environment Records and Contribute to their Compilation”.

It seems from this title that the guidance tells those public bodies what they “should” do in relation to both: (1) using historic environment records, and (2) contributing to the compilation of historic environment records.

However, the Statement of Purpose in the guidance states that the guidance explains how those public bodies: (1) “may” contribute to the compilation of historic environment records, and (b) “should” make use of historic environment records.



The Committee draws attention to inconsistency between: (1) the use of “should” in the title to the guidance, and (2) the use of “should” and “may” in the Statement of Purpose.

The Committee notes that elsewhere the guidance refers to things that the public bodies “must” do (despite the heading of the guidance only referring to what “should” be done).

Further, the guidance does not offer any guidance to public bodies around the meaning of “may”, “should” and “must”. In this regard, the Committee notes the helpful approach adopted in the draft HEFCW Financial Management Code (laid before the Assembly on 29 March 2017) which explained the meaning of “must” and “should” and explained the consequences of failing to comply with the requirements of that code:

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4. Where HEFCW uses the term ‘must’, it means it is a specific legal requirement or requirement under this Code. Institutions must comply with these requirements.
  5. HEFCW uses ‘should’ for items it regards as minimum good practice, but for which there is no specific legislation or for which HEFCW is not setting a requirement under this Code; however, governing bodies must take such guidance into account. HEFCW will consider the extent to which an institution has adopted the ‘should’ provisions (or alternative, equally robust arrangements) in the Institutional Risk Review – our annual assessment of risk.
  6. A summary of ‘must’ and ‘should’ provisions is provided at **Annex C**.
  7. Where an institution fails, or is likely to fail, to comply with a requirement imposed by this Code, HEFCW may instigate the processes within its Statement of Intervention.
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The Committee reports that the guidance could be drafted in a clearer way to help public bodies understand what they may do, what they should do and what they must do, and the consequences of not doing any of those things.

**Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**19 April 2017**





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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** Progress update on the work of the Justice Stakeholder Group

**DATE** 10 April 2017

**BY** Carl Sargeant AM, Cabinet Secretary for Communities and Children

The Justice Stakeholder Group was set up by the former Minister for Public Services in 2015 to consider the UK Government's reforms to the justice system and the growing body of devolved Welsh law. The Group brought together academics and practitioners with extensive knowledge and experience of the justice and legal sectors in Wales. It met on five occasions between July 2015 and February 2016 and presented its findings to the Minister for Public Services in a report *Law and Justice in Wales: Some Issues for the Next Assembly*.

The Minister published the report in March 2016. Since then, there have been a number of significant developments relevant to the recommendations in the report. These are set out in the Welsh Government's progress update to the report in the *Annex*.

## Progress update on The Justice Stakeholder Group’s report ‘Law and Justice in Wales: Some Issues for the Next Assembly’

Justice Stakeholder Group Recommendations	Welsh Government progress update
<p><b>1</b> – The Welsh Government should consider how it can take a greater role in ensuring the effective and comprehensive promotion of the law affecting Wales, including access to the law of Wales.</p>	<p>The report acknowledges the work of the Welsh Government in this area and the Law Commission’s project on the <i>Form and Accessibility of the Law Applicable in Wales</i>. This recommendation is being taken forward as part of the Welsh Government’s response to the Law Commission’s report (published in June 2016). The Counsel General provided an interim response to the Chairman of the Law Commission on 12 December 2016<sup>1</sup> and made an Oral Statement to the Assembly the following day<sup>2</sup>.</p>
<p><b>2</b> – The Welsh Government should seek consequential funding from the UK Government to support the publication, promotion and accessibility of Welsh laws.</p>	<p>The UK Government has responsibility for ensuring statute law is available to the public, although it does not have a statutory duty to publish it (whether free of charge or online). Responsibility for publishing legislation as enacted rests with the Queen’s Printer on behalf of the Crown, which in practice is undertaken by The National Archives. Accordingly, the issue of consequential funding does not arise.</p>
<p><b>3</b> – The Welsh Government should further engage with the administrators of the legislation.gov.uk website to further develop the Cyfraith Cymru/Law Wales website.</p>	<p>The Cyfraith Cymru/Law Wales website is hosted by the Welsh Government and includes links to the legislation.gov.uk web site. The Welsh Government is currently considering how the web site can be improved, partly in response to the Law Commission’s <i>Form and Accessibility</i> report. This recommendation is being taken forward through that work.</p>
<p><b>4</b> – The Welsh Government should seek consequential funding from the UK Government to support the publication,</p>	<p>The UK Government is not responsible for the publication, promotion and accessibility of legal texts and materials. Accordingly, the issue of consequential funding does not arise.</p>

<sup>1</sup> Copy available on Law Commission’s website, together with the reply of the Chairman (<http://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>)

<sup>2</sup> ‘Codes of Welsh Law’ – see Record of Proceedings available at <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=4012&assembly=5&c=Record%20of%20Proceedings#449186>

<p>promotion and accessibility of legal texts and materials that address the law in Wales.</p>	
<p><b>5</b> – The Welsh Government should undertake research on how codification has operated in practice in common law jurisdictions, including countries such as Canada, New Zealand and Australia.</p>	<p>This recommendation is being taken forward through the Welsh Government’s response to the Law Commission’s <i>Form and Accessibility</i> report, which makes a series of recommendations regarding codification of Welsh law. The Welsh Government’s thinking is being informed by practice elsewhere, including, in particular, the countries mentioned in this recommendation.</p>
<p><b>6</b> – The Welsh Government should engage with law schools and training bodies to support the development of Welsh law in education and training programmes for law students, practitioners and the judiciary.</p>	<p>The Welsh Government regularly engages with the law schools in Wales. This has led to secondments and work placements between the law schools and the Welsh Government’s Legal Services Group and a joint law conference between the Legal Services Group and students from the law schools in March 2016.</p> <p>The Welsh Government also regularly engages with legal professional bodies, including the Law Society, the Legal Services Board and the Solicitors Regulation Authority, to ensure full account is taken of Welsh circumstances in reforms to professional legal education and the qualification and regulation of lawyers.</p>
<p><b>7</b> - The Welsh Government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales, without creating barriers for the operation of justice or the ability of practitioners to continue to work across England and Wales.</p>	<p>Throughout the passage of the Wales Bill through the UK Parliament, the Welsh Government argued for a statutory commission on justice in Wales to address these issues. The UK Government confirmed in Parliament it would establish a non-statutory committee on justice in Wales, with membership and terms of reference to be announced in 2017.</p>
<p><b>8</b> – The Welsh Government should consider whether there would be benefits in adopting an inquisitorial, rather than an adversarial, approach to the administration of justice in</p>	<p>Enquiries have revealed that an inquisitorial approach is used in the processes and proceedings of devolved tribunals operated by the Welsh Government’s Welsh Tribunals Unit (WTU) and non-devolved tribunals in Wales operated by HM Courts and Tribunals Service. The judicial leads of the devolved tribunals operated by the WTU are keen to continue to have</p>

<p>any of the devolved tribunals it is responsible for administering.</p>	<p>the flexibility to use an inquisitorial approach where beneficial in the proceedings of their tribunals.</p>
<p><b>9</b> – The Welsh Government should ensure there is a consistent and structured approach to engagement with key stakeholders involved in the administration of justice, including legal practitioners, the judiciary and the Law Commission.</p>	<p>The Welsh Government works with an extensive network of senior judiciary and officials in the justice and legal sectors to influence the development and delivery of justice in Wales. The objective is to ensure that UK Government reforms to the justice and legal sectors take full account of the needs of Wales, including the Welsh language, the growing body of devolved Welsh law and other matters affecting access to justice in Wales.</p>
<p><b>10</b> – The Welsh Government should consider establishing a Justice Stakeholder Group and bringing it together at least once or twice a year for a collective review of developments.</p>	<p>The Welsh Government believes there is a case for a group of stakeholders in the justice and legal sectors in Wales to be established as an independent, self-organising forum. Such a group could draw on the experience of those delivering justice, as well as practitioners and academics in the justice and legal sectors, and could usefully feed into the committee on justice in Wales the UK Government is setting up.</p>



Ein cyf/Our ref MA(L)ARD/0234/17

Huw Irranca-Davies AM, Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Ty Hywel  
Cardiff Bay  
CF99 1NA

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

11 April 2017

Dear Huw,

On 27 February, I attended an evidence session with the Constitutional and Legislative Affairs Committee on the Additional Learning Needs and Education Tribunal (Wales) Bill (*the Bill*). At that session, I agreed to provide the Committee with further information on the following two points before the end of this term:

- the Wales Act 2017 (*the 2017 Act*) and its implications on the Bill, particularly in respect of the late Tribunal amendments; and
- clarification of the basis for the arrangements for the Secretary of State agreement for regulations under sections 79 and 80 the Bill.

#### Analysis of the Wales Act 2017 and its implications on the Bill

As I indicated during the Committee session in February, the 2017 Act's competence provisions are not relevant to the Bill. The competence provisions of the Government of Wales Act 2006, as currently in force, continue to apply in respect of Bills that complete stage 1 of scrutiny by the principal appointed day. That day has not yet been appointed. It can only be appointed in regulations made under section 71(3) of the 2017 Act following consultation with the Llywydd and the Welsh Ministers, and then must be at least four months after the regulations are made.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

However, when I gave evidence to the Committee, work was underway to assess what impact, if any, might arise from amendments made at a late stage in the passage of the 2017 Act. These amendments inserted provisions on Welsh Tribunals into Part 3 of the 2017 Act and are relevant to consideration of the Bill because Part 3 lists the Special Educational Needs Tribunal for Wales (SENTW) as one of the Welsh Tribunals. SENTW is the existing Tribunal under the Education Act 1996 (*‘the 1996 Act’*), the name of which will change to the Education Tribunal pursuant to the Bill.

### ***Part 3 provisions***

Section 60 of the 2017 Act provides for the Lord Chief Justice of England and Wales to appoint a person to the office of President of Welsh Tribunals. Part 3 sets out various functions for the President, for example:

- Section 60(4) provides that the President of the Welsh Tribunals must, in carrying out functions, have regard to the need for Welsh Tribunals to be accessible; the need for proceedings before those Tribunals to be fair, and to be handled quickly and efficiently; the need for members of the Tribunals to be experts in the subject matter or the law to be applied; and the need to develop innovative methods of resolving disputes;
- Section 60(5) provides that the President of Welsh Tribunals is responsible for the maintenance of appropriate arrangements for the training, guidance and welfare of members of the Welsh Tribunals and for representing the views of members of the Welsh Tribunals to the Welsh Ministers and to other members of the National Assembly for Wales;
- Section 61 provides that the President of Welsh Tribunals (with the approval of Welsh Ministers, and after consulting with the Presidents of the Tribunals) may give directions as to the practice and procedure to be followed by Welsh Tribunals; and
- Section 62 provides for cross-deployment of members of Welsh Tribunals, including members of SENTW. To achieve this, 62(4) amends section 333 of the 1996 Act which deals with the constitution of SENTW.

Furthermore, Schedule 5 to the 2017 Act makes further provision about the two alternative routes to the appointment of the President of Welsh Tribunals.

### ***Potential amendment required to the Bill as a result of the Wales Act 2017***

Analysis of the Part 3 provisions in the 2017 Act does not suggest that its impact on the Bill (in terms of requiring amendments) is significant. However, I am considering the need for an amendment to the Bill in order to take into account the amendment made to section 333 of the 1996 Act by section 62(4) of the 2017 Act.

Our Bill currently repeals section 333 and in doing so, would remove the new provision for the cross-deployment of Tribunal members. It well may be that we will wish to retain the ability of members of other Welsh Tribunals to move around to avoid any gaps when Education Tribunal members are not available, thus allowing proceedings to continue.



## Arrangements for the Secretary of State agreement for regulations under sections 79 and 80

Members of the Committee were interested to understand why the agreement of the Secretary of State is needed to make regulations under sections 79 and 80 of the Bill. The Secretary of State functions in those sections exist in the current arrangements in the 1996 Act; so the provisions in the Bill are a restatement of existing law.

As I noted during my appearance before Committee in February, if we wanted to remove these existing functions we would have to seek and obtain Minister of the Crown consent to do so.

## Regulations under section 13(2) and 14(20) of the Bill

There was one area raised with me by the Committee during the course of my evidence session where, given the complexity of the subject, I think it might be helpful if I provide further clarification and information.

It relates to the regulation making powers included in the Bill at sections 13(2) and 14(2) (the later by the insertion of subsection (2B) into section 83 of the Social Services and Well-being (Wales) Act 2014).

The Committee asked two questions in relation to these powers: 1) why are the categories of looked after children that might be prescribed in these regulations not set out on the face of the Bill; and 2) asked that I consider subjecting these powers to affirmative procedure.

These powers, and the categories of looked after children they might prescribe, are inextricably bound up with one another and they should be considered together. They are necessary in order to ensure that the provisions of this Bill, and the system it creates in relation to looked after children, fits with the system for such children created by the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act").

The underlying purpose of the looked after children provisions in the Bill is to ensure that where looked after children of compulsory school age or below have a personal education plan under the 2014 Act, that plan captures all their educational needs, including any additional learning needs that they have. This holistic approach to the planning of educational provision for such children is to be achieved by incorporating the looked after child's individual development plan within their personal education plan and requiring the looking after local authority to be responsible for duties under the Bill.

The requirement for personal educational plans is currently set out in regulations made under the 2014 Act (the Care Planning, Placement and Case Review (Wales) Regulations 2015 ("*the 2015 Regulations*"). These regulations exclude certain groups of children who are looked after for the purposes of the 2014 Act, from the general requirement for a personal education plan. For example children accommodated for short breaks. These exceptions are an important element in ensuring that the degree of planning for the looked after child is appropriate and proportionate in the context of their particular circumstances.

The Bill moves the general requirement that personal education plans are put in place for looked after children on to the face of the 2014 Act. This then enables the Bill to provide for the incorporation of individual development plans into the personal educational plans. However, it is important the regulations made under the 2014 Act continue to be able to make appropriate exceptions to the general requirement for a personal education plan; hence the need for the regulation making power inserted by section 14(2) of the Bill. I do not think it appropriate for the Bill to remove this power and insert the categories of exception on to the face of the 2014 Act. To do so would constrain future changes in relation to social services policy that could currently be delivered through changes to the 2015 Regulations. This goes well beyond additional learning needs. The ability to further develop social services policy in this area through regulations was the position agreed by the National Assembly when it passed the 2014 Act.

The regulation making power at section 13(2) of the Bill follows from the regulation making power in section 14(2). The Bill's provisions for looked after children are predicated upon the children having personal education plans. The regulations made under section 13(2) will enable categories of looked after children for whom no personal education plan is required by virtue of regulations made under the 2014 Act, to be excluded for the purposes of the Bill's looked after children provisions. In other words, it provides the means by which the two regimes can be aligned.

The procedure for making the regulations under sections 13(2) and 14(2) is negative to align with the procedure applicable to the powers in the 2014 Act relating to planning for looked after children (also negative), under which the 2015 Regulations were made.

I would also add that I consider the negative procedure to be appropriate for the section 13 power. If a looked after child is not treated as such for the purposes of the Bill, the child will come within the general provisions of the Bill (as other children do), rather than the specific ones for looked after children. The essential differences between the general provisions and those for looked after children is that in the latter case:

- it is the local authority that looks after the child who is responsible for the duties (rather than a school governing body or possibly another local authority); and
- the IDP must be incorporated into the child's personal education plan.

In other words, the substance of the entitlements in the Bill for those not treated as looked after is equivalent to those treated as looked after.

I hope the Committee finds this information helpful.

I am copying this letter to Lynne Neagle AM, Chair of the Children, Young People and Education Committee, given that Committee's interest in the Bill.

Yours sincerely



**Alun Davies AC/AM**

Gweinidog y Gymraeg a Dysgu Gydol Oes  
Minister for Lifelong Learning and Welsh Language

Huw Irranca-Davies AM  
Chair, Constitutional and Legislative Affairs Committee  
SeneddCLA@Assembly.Wales

27 April 2017

Dear Huw

## Great Repeal Bill White Paper

Following our discussion of Brexit issues at the Chairs' Forum on 5 April 2017, and in light of decisions taken by the External Affairs Committee at its meeting on 3 April 2017, I am writing to inform you of the work that the External Affairs Committee has planned in relation to the Great Repeal Bill White Paper.

I am also writing to invite you and your committee to contribute to this work.

The Great Repeal Bill and the UK Government's broader approach to legislating for Brexit, poses the Assembly and its committees some significant challenges.

The final shape of this Bill will have significant implications both in terms of the Assembly's role in the Brexit process and its place in the constitutional order of the United Kingdom.

The White Paper offers the Assembly its first opportunity to influence the legislation and, arguably, its best opportunity.

I see two key aspects to this scrutiny:

1. **Devolution:** ensuring the Assembly and Welsh Ministers are not prevented from taking an appropriate role in the process; and



2. **Balance of executive power:** that an appropriate balance is struck between the powers and pace needed by Welsh Ministers to complete their legislative task with the need for proper Assembly oversight.

Whilst the External Affairs Committee has been established by the Assembly to take a lead on these issues, such is the scale of the task ahead that I believe most Assembly committees will need to play a part in the Assembly's response. We will maximise the Assembly's ability to influence the final shape of legislation by working collaboratively and coordinating our work where possible.

I would welcome your views on the Great Repeal White Paper and the UK Government's broader legislative approach to Brexit. Our terms of reference are as follows:

In the context of the UK Government's White Paper, to assess whether:

- the Assembly's role in the Brexit legislative process, and in scrutinising executive functions, in areas of devolved competence is protected;
- principles of effective law making are being observed;
- the Welsh people, stakeholder and organisations have sufficient opportunity to contribute to the legislative processes established by the Bill;
- the Bill enables the Assembly to exercise appropriate control over delegated powers provided by the Bill; and
- the Welsh Government's response is sufficient.

The External Affairs Committee is preparing to gather evidence during the first half of the Summer Term, with a view to reporting in early June. Should you wish to respond to this letter, then I would be grateful for responses by Friday 2 June 2017.

We are planning to continue our scrutiny of this legislation (and the implications it has throughout and following the Brexit process) should the Great Repeal Bill be introduced later in the year and I will write to you again should the timescales for this become clearer.



Yours sincerely

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a period at the end.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee



Mr Charles Walker MP  
Chair, Procedure Committee  
House of Commons  
London  
SW1A 0AA

25 April 2017

Dear Mr Walker

### **DELEGATED POWERS IN THE 'GREAT REPEAL BILL' INQUIRY**

I refer to the request for submissions to your inquiry on the delegated powers in the Great Repeal Bill following the publication of the UK Government's White Paper.

We would like to draw your attention to some of our initial thoughts and concerns as we start to consider the impact that exiting the EU will have on law making in Wales. These are set out below. However, as you will appreciate, with so many current unknowns, it is a difficult task to give definitive views on such a complex issue.

### **Accountability for changing legislation in devolved areas**

Our starting point is always that the National Assembly must be the legislature responsible for legislating in devolved areas. This includes passing primary legislation in devolved areas, and delegating powers to the Welsh Ministers to make subordinate legislation as the National Assembly considers appropriate (we recognise that many devolved matters remain in Acts of the UK Parliament, but they are still devolved matters and any changes to such Acts of the UK Parliament are a matter for the National Assembly).

Because of the circumstances and time constraints that exist in relation to exiting the EU, we are concerned about how the Great Repeal Bill will approach the issue of amending legislation in devolved areas, including by means of powers delegated to UK Ministers. In particular, our interest focuses on whether such amendments would occur with or without the National Assembly's consent. If, as we would fully expect, consent is required (in



accordance with *Devolution Guidance Note 9: Parliamentary and Assembly Primary Legislation Affecting Wales* and the National Assembly's Standing Order 30A – Consent in relation to Statutory Instruments made by UK Ministers), the way in which the Bill provides for that consent to be sought will be important.

From our perspective, it is a significant matter of constitutional propriety for the National Assembly to have a role in any changes that are made to legislation in devolved areas.

### **Procedures for making subordinate legislation**

We believe that the National Assembly should have the right to take final decisions on the procedures to be applied to subordinate legislation that needs to be made in devolved areas by the Welsh Ministers to give effect to the UK's exit from the EU. The procedures could in our view be set out in one or more Acts of the National Assembly; the number and extent of such primary legislation would be determined by the number of UK Bills (including the Great Repeal Bill) that will be needed to effect the UK's exit from the EU.

Given that areas such as agriculture, fisheries, environment, food etc. are devolved, we would expect to see a substantial amount of subordinate legislation being laid before the National Assembly for scrutiny. Not only should the National Assembly control the procedures that will apply to scrutinising this substantial amount of subordinate legislation, but it should also be allowed to control the timescale for scrutinising that subordinate legislation. The National Assembly must be given adequate time for proper scrutiny.

### **Breadth of “consequential etc.” powers given to the Welsh Ministers**

We are taking a close interest in the breadth and extent of consequential powers taken by the Welsh Ministers to amend primary legislation in Wales. We are therefore interested in whether such powers will be provided to the Welsh Ministers through the Great Repeal Bill and if so their precise nature.

We note that the White Paper talks of the Bill potentially giving the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, “*in line with*” the power it proposes should be held by UK Ministers. It is unclear whether the phrase “*in line with*” is significant; in our view, it could potentially hold a different meaning to “*equivalent to*”.

In addition, we are keen to learn what wording will be used to define the powers that will be given to the Welsh Ministers (and other devolved ministers) to correct law. For example,



will the drafting rely on familiar terms such as “consequential” or will bespoke drafting be used? While we are concerned about the breadth and extent of powers that may be given to the Welsh Ministers, we also recognise the need for the Welsh Ministers to be given the right tools to perform necessary functions, but they should always be subject to appropriate National Assembly scrutiny and control.

### **Sunset clauses**

We support the use of sunset clauses in the Great Repeal Bill such that relevant powers to correct the statute book are time-limited. They should cease to have effect, perhaps no later than 6 months after the day of the UK’s withdrawal. We would need to see strong evidence in favour of a longer period, particularly if, against the rationale we highlight above, the Bill were to include significant powers to amend legislation in devolved areas in a manner that the National Assembly opposed.

Our thinking is likely to develop as more detail emerges about the precise drafting of the Great Repeal Bill but in the meantime I hope you find this submission of use.

Yours sincerely



### **Huw Irranca-Davies**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





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