

Mick Antoniw MS
Counsel General and Minister for the Constitution

19 July 2022

Dear Mick

Follow-up to evidence session on the Historic Environment (Wales) Bill, 11 July 2022

Thank you for appearing before the Committee on 11 July and giving evidence on the Historic Environment (Wales) Bill (the Bill). We found our discussions on this first consolidation Bill to be productive and it will help our subsequent consideration of the Bill.

There are a number of issues we would like to pursue further. There are also some matters which we did not have the opportunity to raise during the meeting.

I would be grateful to receive your responses to the questions in the Annex by 17 August 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

We have also been giving consideration as to how we may, during the course of our consideration of the Bill, best raise any questions which specifically relate to drafting style and the Drafters' notes which accompany the Bill. I asked you during our meeting whether you and the drafters in the Office of the Legislative Counsel would be content with the drafters themselves speaking with us should the need arise. As I said during the meeting, we would, of course, respect the boundaries of what is appropriate to ask of government officials. I take the opportunity to thank you again for your positive response. The Clerks will liaise with the drafters to identify a suitable date and time, should the need arise.

May I also take the opportunity to formally invite you to our meeting on Monday 14 November (p.m.).

This will be an opportunity for us to discuss with you the matters which have arisen during our full consideration of the Bill, including any matter which is raised with us by stakeholders.

Yours sincerely,

Huw Irranca-Davies

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Chair



Annex

1. During the evidence session we asked you whether decisions had been made to exclude relevant legislation from the consolidation exercise and whether any such exclusions were because of concerns regarding legislative competence (RoP paragraphs 14-22). You and your officials provided some examples – namely the *Protection of Wrecks Act 1973*, the *Redundant Churches and Other Religious Buildings Act 1969*, the *Protection of Military Remains Act 1986*, and the *Ancient Monuments and Archaeological Areas Act 1979*. As discussed during the evidence session, we would be grateful if you would provide details as regards the full reasons why provisions in these Acts have been excluded from the consolidation exercise, along with details of any other relevant legislation which has been deliberately excluded from the version of the Bill introduced to the Senedd.
2. During the session, we also asked you what would happen if the UK Government legislates in a devolved area of law that has been consolidated. It was suggested to us that the Welsh Government would expect the UK Government to reform the law and to do it bilingually (RoP paragraphs 73-81). It was also suggested that this situation could be difficult where the UK Government is preparing a law that applies to the whole of the UK, for example, on a specific matter but the Welsh Government does not “see that that is likely to happen” (RoP paragraph 81). You will know that there have been several examples in recent years where the UK Government has sought to legislate on a UK-wide basis, with or without the input of the Welsh Government or the consent of the Senedd. As such, we would be grateful if you would give further consideration to this matter and confirm:
 - whether discussions have already begun with relevant UK Government counterparts regarding the Welsh Government’s consolidation of law programme – and this Bill in particular – and the Welsh Government’s expectation that any law to be proposed by the UK Government in an area that has been (or is being consolidated) will be done bilingually and any required amendments will be made to the Welsh law as consolidated;
 - how the Welsh Government considers that it could ensure that any amendments proposed by the UK Government to Welsh law which has been consolidated will be done in a way that will preserve the consolidation;
 - whether the Welsh Government will consider any impacts on the consolidation of Welsh law in any discussion it has with the UK Government on a relevant piece of legislation and how it would draw any such potential impacts to attention of the Senedd?
3. We also asked if you would provide more details on your plans for a code of Welsh law on the historic environment and you told us that the code will consist of the Act (if and when the Bill is

passed and then implemented) and any secondary or tertiary legislation under it (RoP paragraphs 92-95). Can you confirm our understanding that:

- 'codes of Welsh law' will each be, in effect, repositories of law which begin with the single piece of consolidated primary legislation, and sitting within the repository will be any delegated legislation made in consequence of the headline primary legislation, along with all relevant guidance;
 - in practice, future amendments will, in effect, be made to specific law within a code;
4. What discussions have you had with The National Archives about the styling of legislation as codes on legislation.gov.uk and the need to update them quickly?
 5. We asked you to provide more detail on your thinking as regards changes to the Senedd's Standing Orders to ensure future Bills and amendments are made within a code of Welsh law . You confirmed that such changes would have an impact on private Member proposals for Bills to be introduced to the Senedd (RoP paragraphs 96-98). As such we asked if you had given consideration to consulting backbench Senedd Members and Party Groups directly on your proposals, in addition to any evidence gathering the Business Committee may undertake itself. We would be grateful if you would provide clarification and confirmation of your intentions as regards this matter.
 6. Are there any new powers included in the Bill that give the Welsh Ministers powers to make policy changes?
 7. Section 209 of the Bill relates to regulations that may be made under the Bill, once enacted. Section 209(6) provides for the downgrading of scrutiny procedures – from affirmative to negative - for certain regulations relating to partnership agreements. Can you clarify how, in your view, this is line with SO26C.2(iv)?
 8. Can you explain what has been the effect of the **Interpretation Act 1978** and the **Legislation (Wales) Act 2019** - both of which apply to Welsh law - on the Bill?
 9. Changes have been made throughout the Bill as regards where existing Acts used the wording "expedient" and "appropriate", and most references to what is "expedient" or "appropriate" have been omitted from the Bill. In the Drafters' Notes we are told that "the two words have the same effect, and in most cases they do not add anything to the general requirements of administrative law for public authorities to act reasonably". We are aware that recent law reform Bills introduced to the Senedd include these words. Can you therefore offer some further clarity and explanation on this matter.
 10. You have acknowledged that work will be needed by HM Courts and Tribunals Services to update their systems to reflect the new legislation. What discussions have you had with HMCTS and are they in agreement that such changes will be undertaken as part of their normal course of business?

11. The Bill makes changes to sentencing powers of Magistrates' Courts. In the Drafters' Notes which accompany the Bill you highlight that section 13 of the *Judicial Review and Courts Act 2022* further amends the *Sentencing Act 2022* so that the Lord Chancellor may change the "applicable limit" from 12 months to 6 months and back again. You note that the penalties for either-way offences have been restated to reflect these changes on the understanding that section 13 will come into force before this Bill. What is your understanding as regards when section 13 of that Act will come into force? What impact will there be on Bill if section 13 isn't in force before this Bill, and what action will you be required to take?
12. In the Explanatory Memorandum you note that the existing legislation is accompanied by a range of advice and guidance, include **Technical Advice Note 24**.
 - Are there plans to update this guidance as a result of this Bill ?
 - What progress has been made with the Cyfraith Cymru website?
13. The Standing Orders do not require a financial resolution to be considered or agreed by the Senedd for consolidation Bills. The total transitional costs for the Bill are estimated to be around £50,000, to be spread across a three year implementation period. That figure is higher than the cost estimates for other law reform Bills introduced to the Senedd where a financial resolution was required, for example the **NHS Indemnities (Wales) Bill**, where the estimated costs were £30,000. It is important that the cost estimates are accurate, robust and justifiable. Please can you explain how you arrived at the costs for the Bill, and provide details of the specific transitional costs involved?
14. Paragraph 43 of the Explanatory Memorandum notes the estimated costs per local authority or National Park authority will be approximately £17,500, approximately four days' work per authority. On what basis have you estimated that it will be four days of work for local and national park authorities to implement the legislation and were the authorities consulted on the estimates of potential costs?
15. Can you clarify that there will be no costs to land owners or private individuals?
16. Paragraph 44 of the Explanatory Memorandum states that costs for third sector bodies and amenity societies will be "minimal and probably in the region of one person for one day" but no actual costs are provided. Can you clarify why this is the case?
17. Can you clarify if the £1,400 cost estimated for holding familiarisation workshops for heritage crime officers includes both the costs to Cadw and the costs to police forces?
18. Paragraphs 50 and 52 of the Explanatory Memorandum set out the costs for Welsh Archaeological Trusts and the Royal Commission on the Ancient and Historical Monuments of Wales. On what basis were these costs calculated and were the Trusts and Royal Commission consulted on these costs?