



Huw Irranca-Davies, Chair
Legislation, Justice & Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

28 October 2022

Dear Huw,

HISTORIC ENVIRONMENT (WALES) BILL

Thank you for your letter of 7 October 2022 asking me to review the evidence provided to the Committee by Dr Hayley Roberts on the current exclusion from the Bill of marine historic environment legislation.

Clearly there are no absolute divisions between subject matters in law and there will be connections between matters included in a consolidation Bill and others which are not.

Wrecks are the best-known features of the Welsh marine historic environment, but it also includes submerged landscapes, artefact scatters on the seabed and evidence of centuries of exploitation of the marine environment. A number of statutes currently provide a complex web of protection for the marine historic environment, particularly the:

- Protection of Wrecks Act 1973 (the 1973 Act),
- Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act),
- Protection of Military Remains Act 1986,
- Merchant Shipping Act 1995,
- Marine and Coastal Access Act 2009.

The main provisions for the protection of the marine historic environment are contained in the 1973 and 1979 Acts.

Section 1 of the 1973 Act provides protection for wrecks designated because of their historical, archaeological or artistic importance, or for any objects contained (or formerly

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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.

contained) within them. Diving at designated wreck sites in Wales is prohibited unless Cadw has issued an appropriate licence.

Section 2 of the 1973 Act provides protection for wrecks that are designated as dangerous because of their contents. The subject-matter of section 2 is a reserved matter under paragraph 120 of Schedule 7A to the Government of Wales Act 2006 so it would not be possible to include it in the Bill.

Dr Roberts raises the question of whether wrecks could be protected through scheduling under the 1979 Act rather than the 1973 Act, and the Bill instead repeal section 1 of the 1973 Act for Wales. It is possible to schedule wrecks and other underwater sites within the 12 nautical mile limit of territorial waters as well as those up to and above high water. The systems of protection offered by the two Acts are, however, different. If a wreck has been scheduled, there is no requirement for a licence to dive on a site; public access is permitted on a 'look but do not touch' basis. There are occasions where scheduling would not be appropriate. For example, a remote wreck site, which is vulnerable to uncontrolled salvage or treasure hunting, or which is particularly fragile, might be better preserved through designation as a protected wreck. This means that the site remains as undisturbed as possible, minimising the risk of damage. Despite the acknowledged shortcomings of the 1973 Act, Cadw would be reluctant to lose the ability to designate a wreck under the 1973 Act if that is deemed the most appropriate protection.

As explained in my letter of 17 August, incorporating section 1 of the 1973 Act in the Bill would require a number of new provisions to make it consistent with modern practices. For example, the Act does not require a formal process of consultation before designation or an opportunity to review decisions to designate or refuse a licence to dive. If the provisions are compared to those, for example, in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the 1979 Act, the lack of detail in the procedures is stark. Filling these gaps would entail introducing more than minor changes to legislation.

Three other statutes also affect the management and protection of the marine historic environment:

- The Marine and Coastal Access Act 2009 (2009 Act) sets out a requirement for a national marine plan for Wales. It also requires marine licences for many types of activity below the level of mean high water spring tides. In considering applications, Natural Resource Wales considers a range of factors, including the impact of any proposed activity on the marine historic environment. The marine historic environment is only one of the many matters treated in the 2009 Act and it would not be appropriate to include it in the Bill.
- The Protection of Military Remains Act 1986 (1986 Act) makes it an offence to interfere with the wreckage of any crashed, sunken or stranded military aircraft or designated vessel without a licence. This is irrespective of loss of life or whether the loss occurred during peacetime or wartime. None of the Secretary of State's functions under the Act have been devolved to the Welsh Ministers. In practice, the Ministry of Defence is responsible for designation as a protected place or as a controlled site. The purposes of the Act are not limited to the historic environment, and it does not apply to the very oldest vessels and sites, so it would not be appropriate for this consolidation.
- Under the Merchant Shipping Act 1995 all wreck material — regardless of age, size or apparent importance or value — recovered from UK territorial waters must be reported to the Receiver of Wreck. Although the 1995 Act puts in place controls that

affect the marine historic environment it's subject matter is a reserved matter under paragraph 120 of Schedule 7A to the Government of Wales Act 2006.

While the accessibility of the law for the marine historic environment is unquestionably an issue, there are good arguments that the 1973 Act's proper association is with legislation for the marine environment, where management and protection could be treated more holistically. This point also came out in the Law Commission's evidence to the Committee.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution