



Ein cyf/Our ref: CG/PO/8/2023

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

12 January 2023

Dear Huw,

HISTORIC ENVIRONMENT (WALES) BILL

My thanks to you and the Committee for your detailed and considered report on the Bill, which I was pleased to receive just before Christmas. I will respond more fully in the debate scheduled to take place on 17 January.

Recommendation 10 of the Committee's report seeks clarification, ahead of the debate, on matters relating to section 2(3) of the Bill. I trust this letter provides the information the Committee is seeking.

Section 2 of the Bill sets out the meaning of "monument" and "site of monument"; subsection (3) removes from consideration as a monument any religious building that is currently used for religious purposes.

The Government's view is that section 2(3) of the Bill would still be compliant with human rights without the new regulation-making power. However, the Government is also of the view that the existence of the power strengthens the compliance of section 2(3).

As to whether the regulation making power is a minor change, we agree with the Committee's statement in paragraph 317 of its report that the provision is not limited to providing clarity. But we do think it is a minor change for the purposes of Standing Order 26C. I hope it is helpful to explain further the rationale behind the inclusion of the regulation-making power.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

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.

The issue is not straightforward. It involves making difficult judgements about how to accurately restate the current legal position in as accessible a way as possible.

Our decision to avoid replicating the current uncertain meaning of “ecclesiastical” in section 2 of the Bill introduces a different issue that we think needs to be addressed in the drafting. The effect of the opening words of section 61(8) of the 1979 Act is uncertain for the reasons set out in my letter of 17 October 2022, it is an expression that’s open to interpretation, particularly because of the effect of human rights legislation.

The wording of the restated provision in the Bill isn’t open to interpretation in the same way: the general rule in section 2(3) has been expressed to apply to religions generally, an approach which we’ve based on our starting point that all religions ought to be treated in the same way. But an approach based on that general principle only could have adverse and discriminatory effects in practice, depending on the circumstances of a given case. We have therefore taken the view that flexibility is appropriate to allow Ministers to adjust the operation of the general rule.

We also need to recognise that it is possible that future case law affecting the interpretation of the ECHR could require a change in approach to religious buildings in particular circumstances.

There would of course also be legal constraints on the exercise of that power, for instance, it wouldn’t allow regulations to hollow out the general rule in section 2(3) of the Bill so as to deprive it of any meaning; and any regulations would of course have to be ECHR-compliant. Any regulations made under that section would be subject to the affirmative procedure and, in line with our well-established practice, any change in policy would be subject to proper consultation.

For these reasons I am of the view that including the regulation making power in section 2(3) of the Bill is a minor change to the law.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal blue line.

Mick Antoniw AS/MS

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