



Ein cyf/Our ref: CG/PO/17/2023

Huw Irranca-Davies, Chair
Legislation, Justice & Constitution Committee
Senedd Cymru
Cardiff Bay
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18 January 2023

Dear Huw

HISTORIC ENVIRONMENT (WALES) BILL

I would like to start by expressing, once more, my thanks to you and the Committee for your detailed report on the Bill, and for the positive and helpful way in which yesterday's debate was undertaken. I am very pleased that the Senedd agreed the Bill should proceed as a consolidation Bill and I look forward to our discussions in the Detailed Committee Consideration proceedings scheduled for 13 February.

Ahead of that meeting I am placing on record the Government's position on the recommendations of the Committee addressed to us. I will deal with those recommendations relating to the Historic Environment (Wales) Bill first, before turning to the recommendations of wider application:

- **Recommendation 1** relates to Minister of the Crown consent and, as I informed you yesterday, we have now received consent on both aspects from the Secretary of State for Wales.
- We agree that the law associated with the marine historic environment should be reviewed (**recommendation 6**), but this will have to be considered after the implementation of the current Bill if it is enacted, as this work has not been identified as a priority for this Senedd term.
- Schedule 8 to the Bill deals with procedures for orders modifying or revoking listed building consent, and Schedule 10 deals with procedures for orders terminating listed building partnership agreements. **Recommendation 7** of the Committee's report is concerned with the evidence base for changing these Schedules to permit interested

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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.

parties to make written representations on these matters (not only oral representations). We are of the view that the evidence base does support a change in the law to allow for written representations, but as the Committee has not recommended it be included in this Bill we will not be seeking to amend the Bill at this time. A suitable vehicle to deal with this matter will need to be identified when resources permit.

- **Recommendation 8** is concerned with preservation notices under section 147 of the Bill upon which the Committee received evidence from one stakeholder contending that this should be removed from the Bill. Following the research conducted after the 2016 Act was passed (to which we have drawn the Committee's attention), the next step on determining whether the law should be changed would be for Cadw to undertake a formal consultation, but this is not a priority for the current Senedd term and will have to be considered when resources permit.
- I have already responded to the Committee on **recommendation 10**, which relates to the power to specify exceptions from the general position in section 2(3) of the Bill that religious buildings used for religious purposes are excluded from the definition of "monument" in Part 2 of the Bill.
- **Recommendation 11** seeks clarification on the partial restatement of the grounds for requesting a review under regulation 4 of the Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017. Regulation 4(b) of those Regulations allows for an application for a review on the ground that an alteration to the area of a scheduled monument is considered inappropriate. Such a change would only be inappropriate if the area in question is not of national importance, so we consider that this is already captured by the provision in section 9(2) of the Bill. We have accordingly not stated any other ground of review in the Bill. We have retained the regulation-making power in case it turns out that it is necessary to identify new grounds in the future. To date, no applications to review a Welsh Minister's decision to schedule a monument have been made.
- The Committee has looked ahead to implementation of the Bill if enacted by the Senedd and is seeking more information on proposed subordinate legislation (**recommendation 12**). Our current assessment is that 8 statutory instruments made under the 1979 Act and the 1990 Act will be consolidated and restated. There are also three existing directions that will need to be included in those restatements. This is because their subject-matter will fall to be covered by regulations if the Bill is passed in its current form. The number of new statutory instruments that will result is still being settled, as this will depend on judgements about how best to consolidate the existing provisions. In addition, a commencement order and consequential amendment, revocation, transitional and savings regulations will also be required.

Although work on these instruments has already begun, the majority of this work will take place after the Bill is passed and during the implementation period of 2023 to 2026.

Cadw will continue its proactive engagement activity with key users of the legislation during implementation; to date this has included:

- Circulating 9 Historic Environment Updates that explain the Bill and report its progress;
- Updating the Cadw website with useful information on the Bill including a timeline;
- Holding an awareness-raising session with over 100 participants;

- Attending a number of meetings to update key stakeholders, partners and users of the legislation on the Bill.

Some of the Committee's recommendations go beyond the immediate Bill, and in some cases have implications for law reform Bills as well:

- We acknowledge the points made by the Committee in its report and **recommendation 3** relating to pre-introduction work with stakeholders. The aim of much of the pre-introduction work on the two main consolidation Bills under development so far has been to ascertain how stakeholders understand and apply the existing legislation. We have also focussed on discrete elements of proposed drafting to ensure, where there is any element of doubt, that the existing position is being maintained.

As a general principle the Welsh Government continues to ensure that the outcomes of any formal consultation on legislation will be made public, as will a summary of key interactions with stakeholders. But engagement with stakeholders and others on the development of any Bill, including a consolidation Bill, is often done in confidence and without the expectation that full details will be made public. Sometimes this is because stakeholders ask that their views are not made public and only wish to engage fully if this is upheld.

We will however learn from this first consolidation Bill and will ensure this is reflected in future projects.

- **Recommendation 4** is concerned with the consolidation of Measures and Senedd Acts. I recognise that legislation enacted by the Senedd holds a special interest, but it has the same status as legislation enacted by the UK Parliament. I therefore consider it should be dealt with in a similar way in both the exercise of consolidation and the development of the supporting materials. I will however ensure that future Explanatory Memoranda to consolidation Bills make clear when provisions of a Measure or Senedd Act are being incorporated.
- **Recommendation 5**, on the other hand, is concerned with legislation not being incorporated into a Consolidation Bill. Your scrutiny of this first consolidation Bill has highlighted to me that Standing Order 26C sets out that the Committee may consider the scope of the consolidation, but the requirements for the documentation focus only on what is in the Bill. We will consider what information can helpfully be given for future Bills to aid the Committee's considerations.

There are no hard and fast categories of subjects in law. The question of what a consolidation Bill covers is inevitably a matter of judgement and starts from what it is appropriate and feasible to include. The complexity of this was recognised by the Law Commission in their evidence to the Committee who support the way the Government dealt with this (as the Committee notes in paragraph 148 of the report). There will always be connections and interactions with law which is not being consolidated.

As recognised in Standing Orders, part of the scrutiny process is to make a judgement on the scope of a consolidation Bill. In the particular case of this Bill, the information provided in the Explanatory Memorandum explained what law has been included in the Bill, and the subsequent engagement with the Committee during scrutiny has provided additional detailed information on the legislation that was excluded (and the Government has found this interaction helpful).

- **Recommendation 9** has implications for this Bill, future consolidation Bills and (I believe) also law reform Bills, as it is concerned with the information provided on proposed amendments to Bills. The Government currently provides information about the purpose and effect of all amendments it proposes to Bills, and intends to do the same for any amendments it proposes to consolidation Bills. This is over and above the existing requirements for tabling amendments in Standing Orders 26 and 26C. We also ensure that the Government Minister speaking to amendments sets out the case for each amendment during the Committee or Senedd proceedings. I believe this is the way we should continue to provide our views on the necessity and appropriateness of amendments, and that determination on admissibility remains a matter for the Senedd and Llywydd.

The remaining recommendations are for the Senedd or the Business Committee, but in relation to **recommendation 14** I can confirm that the next Bill expected to be brought forward under the *Future of Welsh Law* programme will be a Bill repealing provisions on the statute book that are no longer of practical utility or benefit. The consultation on a draft Statute Law (Repeals) (Wales) Bill has just concluded and I will be making further information about that available in due course. However, as set out in that consultation, we now expect that Bill to be introduced into the Senedd under Standing Order 26. This means the next consolidation Bill is likely to be the project dealing with the simplification and modernisation of planning law, and any review of Standing Order 26C is likely to take place towards the end of this Senedd term.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw", 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