

HE 18

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee

Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill

Ymateb gan: Sefydliad Siartredig yr Archeolegwyr

Response from: Chartered Institute for Archaeologists

1. Summary

1.1 This submission confirms the support of the Chartered Institute for Archaeologists for the general principles of the Historic Environment (Wales) Bill and endorses the aims of the Bill to improve the management and protection of the historic environment and to increase transparency and accountability in decision-making.

1.2 The Institute particularly welcomes the proposed introduction of a statutory duty on local planning authorities in relation to Historic Environment Records. The detailed drafting of these provisions is crucial in order to define what a Historic Environment Record must contain (and thus avoid lip service being paid to compliance) and to ensure that it is supported by an effective historic environment service (without which a Historic Environment Record can be a closed book).

1.3 The Bill does not seek to effect a fundamental overhaul of heritage protection for Wales and the Institute does not take issue with this approach. Nonetheless, there are further, discrete reforms which could have more far-reaching effects. These include the introduction of archaeological conservation areas on land and of historic marine protected areas at sea and the reform of class consents for scheduled monuments. Some, if not all, of these may more appropriately be dealt with in other legislation (whether primary or secondary), but should be considered when addressing the general principles of the Bill.

2. Introduction

2.1 The Chartered Institute for Archaeologists (CIfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

2.2 CIfA has over 3,200 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and

environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

2.3 This submission has been compiled with the assistance of ClfA's Wales / Cymru Group which has over 300 members practising in the public, private and voluntary sector in Wales.

3. General

More effective protection of listed buildings and scheduled monuments

3.1 The Bill will give more effective protection to listed buildings and scheduled monuments, although we consider that the Bill's aims should extend beyond this, seeking more effectively to protect historic assets generally (by which we mean those assets of sufficient significance to warrant consideration in the planning system). The historic environment comprises many assets which are neither listed nor scheduled.

3.2 Notwithstanding this caveat, ClfA welcomes all the measures listed on page 5 of the Explanatory Memorandum under the heading *Measures ... to give more effective protection to the historic environment* and, in particular:

(1) the extension of the definition of 'monument' in the Ancient Monuments and Archaeological Areas Act 1979 (clause 22), although the extended definition will not necessarily cover palaeoenvironmental material that is not in any way influenced by human activity but provides important background and context for that activity

(2) the modification of the 'defence of ignorance' for offences relating to scheduled monuments (clauses 15-17), which should reduce the scope for the culpable to avoid prosecution

(3) the introduction of temporary stop notices for scheduled monuments (clause 13) and for listed buildings (clause 29)

(4) the introduction of enforcement notices for scheduled monuments (clause 12) which provide a more flexible alternative (or additional) action to prosecution, although it would be helpful to make clear in statute that '*works ... to alleviate ... the effect of works carried out without scheduled monument consent*' in proposed section 9ZC of the 1979 Act include such steps as recording and the conservation of material recovered from site

(5) the introduction of interim protection in relation to scheduling (clause 3) and listing (clause 24). Although not listed under this heading in the

Explanatory Memorandum, this is a very necessary measure to protect assets considered for scheduling or listing as evidenced in Wales and elsewhere in the United Kingdom (most recently in London: see <http://www.independent.co.uk/news/uk/home-news/developers-who-destroyed-historic-london-pub-without-permission-could-be-ordered-to-rebuild-brick-by-brick-10212893.html>).

3.3 The main barrier to the effective implementation of these provisions in the Bill is likely to be a lack of resource at national and local government level. The financial implications of such provisions are unlikely to be great (for instance, the extended definition of ‘monument’ will not produce a throng of new sites for scheduling; improved enforcement mechanisms should facilitate more prompt enforcement action and closing loopholes in defences to prosecution should reduce the opportunity to ‘spin out a defence’). Nevertheless, scheduling, enforcement and proactive management of the historic environment all take time and money. Unless Cadw, local authorities and other bodies are properly funded, fit-for-purpose provisions to protect the historic environment will count for nothing and the unintended consequence of the Bill may be public dissatisfaction with bodies which have the tools but not the resources to do the job.

3.4 Other measures which should be considered to protect the historic environment more generally, whether in this Bill or elsewhere, include

(1) historic marine protected areas (as introduced in Scotland by section 73 of the Marine (Scotland) Act 2011). If the provisions in clause 20 are a precursor to scheduling the 6 protected wrecks in Welsh waters (see proposal P7 in *The Future of our Past*) this does not address the practical difficulties of scheduling at sea. Historic marine protected areas would provide a more flexible means constructively to manage marine heritage assets.

(2) reform of the class consents system for scheduled monuments in Wales. The threat to scheduled monuments from agricultural activity (and particularly ploughing) has long been recognised in the United Kingdom (see, for example, *Ripping Up History: Archaeology under the Plough* (2003) English Heritage) and the removal of agricultural class consents would do much to address these issues. There may be some compensation implications but it is not expected that these would be unduly onerous. Such expenditure would be a wholly justifiable price for the significant additional protection of historic assets that would be achieved.

(3) archaeological conservation areas. ClfA would support legislative change to enable conservation areas to be designated because of their special archaeological interest (as opposed, or in addition, to their special

architectural or historic interest). This would, for instance, facilitate the restriction of permitted development rights in areas of high archaeological potential where the area is not currently of sufficient interest to warrant designation. The exercise of permitted development rights pose significant problems for historic assets and particularly those which are undesignated. In some instances, permitted development rights are excluded where assets are listed, scheduled or otherwise designated, but in the majority of cases undesignated assets (including many archaeological sites) do not have this advantage.

Enhancing existing mechanisms for the sustainable management of the historic environment

3.5 Measures such as the introduction of heritage partnership agreements (clauses 11 and 28) and relaxation of the conditions for an application for a certificate of immunity from listing (clause 27) mirror provisions already introduced in England and should facilitate the sustainable management of the historic environment. Modifications to the scheduled monument consent process (clauses 5-10) should also achieve this aim, although ClfA would also like to see the reform of class consents (see paragraph 3.4(2) above).

3.6 The Institute strongly supports the introduction of a statutory duty in relation to Historic Environment Records (HERs) (clause 33). HERs and the historic environment services which support them play a key role in the sustainable management and protection of the historic environment.

3.7 The detailed provisions (clauses 33-36) supporting the implementation of a statutory duty will be central to its success. ClfA endorses Welsh Government's approach to these matters, in particular, welcoming

(1) the requirement in clause 33 to keep HERs up to date – a HER needs to be a dynamic tool

(2) the definition in clause 33 of what a HER should contain (provided that clause 33(2)(h) is sufficiently robust to ensure that information about undesignated assets is properly and consistently recorded). Without this, local planning authorities could claim to have complied with their statutory duties by maintaining an inadequate database. Concerns about the efficacy of requirements properly to record information about undesignated assets are compounded by the phrasing of the accompanying draft statutory guidance, *Managing Historic Environment Records in Wales*, which states at page 10 that '*Entries might [not must] include non-scheduled archaeological sites, non-listed 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*'

(3) the requirement for local planning authorities to *'make available to a person wishing to inspect its historic environment record advice on or assistance with retrieving and understanding information contained in the record'* (clause 34(1)(c). This provision is crucial to ensure that HERs are supported by appropriate expertise and is the key to unlocking an invaluable community resource (in addition to facilitating sustainable development)

(4) the arrangement for discharge of functions (clause 35) which will allow the Welsh Archaeological Trusts to continue their role of maintaining and supporting regional HERs. ClfA is strongly supportive of the Trusts (all of which are registered under the Institute's Registered Organisations scheme: <http://www.archaeologists.net/regulation/organisations>) and their roles

(5) the provisions enabling Welsh Ministers to issue guidance (clause 36). Guidance will have an important part to play in ensuring that the historic environment is managed sustainably, addressing such issues as the application of professional standards (see <http://www.archaeologists.net/codes/ifa>) and requirements for work to be carried out and advice provided by accredited experts.

3.8 The limited additional expenditure envisaged in paragraphs 468 – 471 is wholly justifiable in order to underpin a key function in the sustainable management of the historic environment. ClfA endorses the conclusions at paragraphs 476 and 477 of the Explanatory Memorandum.

Greater transparency and accountability in decisions taken on the historic environment

3.9 Provisions for consultation prior to scheduling (clause 3) or listing (clause 24) and review of decisions to schedule (clause 3) or list (clause 24) appear coherent and effective to introduce greater accountability and transparency into the process. ClfA supports these measures, provided that the necessary interim protection mechanisms are in place.

3.10 The establishment of an advisory panel for the Welsh historic environment on a statutory basis (clauses 37 and 38) is welcomed. We agree that it would recognise *'the need for long-term integrated policy development and planning'* (paragraph 483 of the Explanatory Memorandum) and contribute to greater transparency and accountability in decision-making. However, care will need to be taken to ensure that there is no duplication of the roles of other bodies (such as HEG).