

Ken Skates AC / AM

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Deputy Minister for Culture, Sport and Tourism



Llywodraeth Cymru
Welsh Government

Christine Chapman AM
Chair of the Communities, Equality and Local
Government Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Christine.Chapman@assembly.wales

19 November 2015

Dear Christine Chapman AM,

Historic Environment (Wales) Bill

In my letter of 3 November, responding to the committee's recommendations on the Bill, I agreed to carry out further research into the feasibility of including statutory protection for historic parks and gardens and to report back to the Committee no later than completion of Stage 2.

I am pleased to attach a report prepared by Historic Environment Services (Cadw) which explains the current arrangements for managing and protecting historic parks and gardens, and four possible options for improving protection, including the current proposal. As well as looking at the advantages and disadvantages of each it also seeks to identify the likely costs.

I hope you find this report of interest in your deliberations on the Bill.

A handwritten signature in black ink, appearing to read 'Ken Skates'.

Ken Skates AC / AM

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Deputy Minister for Culture, Sport and Tourism

An Assessment of Options for Protection for Registered Historic Parks and Gardens within the Historic Environment (Wales) Bill

Contents

Summary	2
1. Introduction	3
• Background	3
• Significance of Registered Parks and Gardens of Special Historic Interest	3
2. Existing Protection Arrangements	5
• Listed Buildings	5
• Conservation Areas	5
• Scheduled Monuments	6
• Development Management	6
• Tree Preservation Orders	7
• Hedgerow Regulations	7
• Felling Licences	7
3. Management Arrangements	7
• Agri-Environment Schemes	7
• Conservation Management Plans	8
• HMRC Capital Taxation and the National Heritage	9
4. Summary of Existing Arrangements	9
5. Options for Providing Additional Protection for Historic Parks and Gardens	9
• Option 1	9
• Option 2	10
• Option 3	11
• Option 4	13
6. Summary	14
Annex 1 Extract from the Regulatory Impact Assessment accompanying the Historic Environment (Wales) Bill	16

Summary

This report examines existing arrangements for the protection and management of sites included on the Register of Parks and Gardens of Special Historic Interest in Wales, before considering a range of options for increasing protection. These options are as follows:

- Option 1 — Place the Register of Parks and Gardens on a statutory basis, but do not impose any new regulatory controls over works and activities.
- Option 2 — Introduce a statutory duty to have special regard to the desirability of protecting registered parks and gardens when undertaking any function under the Planning Acts
- Option 3 — Use existing legislation for scheduled monuments, and the proposed revised definition of a monument under the Historic Environment (Wales) Bill, to facilitate the statutory protection of registered parks and gardens as scheduled monuments.
- Option 4 — Introduce a new bespoke legislative framework comparable to listed building and scheduled monument consent where it would be a criminal offence to do anything that would alter the character of a registered park and garden without first obtaining registered park and garden consent.

There is already a framework in place for managing some of the activities that could damage the character and significance of our historic parks and gardens, using existing regulatory mechanisms for designated assets, such as listed buildings and scheduled monuments, where they coincide with registered historic parks and gardens. Inclusion on the register is also a material consideration in the planning process, which places some control over development that could damage the special interest of registered parks and gardens. New guidance, which will be issued for consultation during 2016, will support the management of historic parks and gardens through the existing framework. Extensive protection and some positive management is offered through agri-environment schemes. There is no compelling evidence to suggest that unregulated activity is causing significant damage to the special interest of registered parks and gardens, the majority of which appear to be well cared for by their owners. It is suggested that options to extend protection would be costly and would provide only limited additional benefit.

1. Introduction

Background

- 1.0 This briefing considers recommendation 4 of the Communities, Equality and Local Government Committee of the National Assembly for Wales within its Stage 1 Committee Report on the general principles of the Historic Environment (Wales) Bill. The Committee recommended that the Deputy Minister for Culture, Sport and Tourism should further consider how a system of statutory protection for historic parks and gardens could be provided within the Bill. The Committee advised that this consideration should include an assessment of the practical and financial implications of such a system for the Welsh Government, owners and other relevant parties.
- 1.1 An initial assessment of the desirability of statutory protection was undertaken as part of the scoping for the Bill, which included workshops held with the sector during 2012. However, it was considered undesirable and unnecessary to add a further layer of complexity for owners. This briefing provides further analysis on the issue of statutory protection for historic parks and gardens.
- 1.2 Human rights issues in respect of the provisions of the Bill have been considered as part of the legal analysis of the Bill. This briefing is also mindful that any proposals must be compatible with the Convention on Human Rights and that there is a balance to be struck between the rights of the individual and protection of the historic environment. Careful consideration must therefore be given as to whether provisions contained in the Bill are in the public interest and proportionate. Any system of statutory protection for historic parks and gardens would need to be fully justified.

Significance of Registered Parks and Gardens of Special Historic Interest

- 1.3 The historic parks and gardens of Wales form an important and integral part of the historic and cultural fabric of the nation. Historic parks and gardens can make an important contribution to quality of place and life, and add to the character and identity of an area. There are currently 386 sites on the Register of Parks and Gardens of Special Historic Interest.
- 1.4 Historic parks and gardens are unlike many other types of heritage asset in that:
 - They often encompass large areas of land which over the years may have been divided into multiple ownerships with different management regimes.
 - The overall structure of a park or garden is based on a range of natural and man-made elements of varying significance and with different management requirements. These elements may include: archaeological remains; built structures; planted elements including gardens and grounds, parkland and woodland; water features and features associated with water management; and natural and man-made landforms. Some of these elements may have statutory protection in their own right.

- They always contain a living and therefore transient planted element (subject to seasonal change and with a natural lifespan) with particular management needs; and
 - Their elements, including planting (intentional and incidental), water features (natural and man-made) and ancient built features (habitat for lichen and wall flora and fauna), often make parks and gardens of high biodiversity value.
- 1.5 The Register includes a diverse range of sites from the medieval period to the twentieth century. Most historic parks and gardens illustrate several phases of development, in which existing features were incorporated into successive design schemes. Many also contain several types of land use: The commonest type of site on the Register is the country estate — a landscape which combined pleasure and recreation with production — but also included are public urban parks, as well as a number of smaller private gardens.
- 1.6 Sites included on the Register are assessed against a set of criteria which explains that gardens, parks, designed grounds, designed ornamental landscapes and places of recreation may be of special historic interest:
- a. When they illustrate some particular aspect of the history of gardens, parks, designed grounds, designed ornamental landscapes and places of recreation, or of the history of gardening, ornamental landscaping or horticulture — for instance, they may provide examples of the work of a particular designer, have features from a particular period or in a particular style, or contain items of interest to historians of design and horticulture or social historians;
 - b. When they have significant historic associations — for example, with a particular person or event; and
 - c. When they have group value with buildings or other land and the group value is itself of historic interest — for example, they may provide a historic setting for a building of historic interest.
- 1.7 The Register was compiled in order to aid the informed conservation of historic parks and gardens, and the policy objective is to enable these sites to evolve whilst preserving their most significant attributes. The aim is to encourage the management of change in a way that prevents irreversible harm to the special historic character and significance of the registered site. Change can be loosely broken down into three categories:
- i. Irreversible harm — change to all or part of a site or its setting that permanently damages its historic character and significance. Irreversible harm tends to be brought about by inappropriate development and may be direct physical damage to the site or its setting.

- ii. Reversible harm — change to all or part of a site or its setting that damages its historic character and significance but that can be reversed by altering management and maintenance regimes.
- iii. Unavoidable harm — unavoidable change to all or part of a site or its setting that damages its historic character and significance (for example as a consequence of climate change). Unavoidable harm has an element of unpredictability, but can sometimes be mitigated by adapting management and maintenance regimes.

2. Existing Protection Arrangements

- 2.0 Existing regulatory regimes already afford some protection to registered parks and gardens of historic interest, and help to secure their preservation for current and future generations.

Listed Buildings

- 2.1 Many registered historic parks and gardens form the setting for a listed building. Structures within these sites (such as walls, statues, gazebos, ha-has and other garden features) may also be protected as part of the curtilage of the principal listed building, and some may be listed in their own right.
- 2.2 Listed building consent is needed to alter or remove any structures that are either listed in their own right or that form part of the curtilage of a listed building. There is a statutory requirement to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses in determining applications for listed building consent and planning permission. These statutory provisions afford considerable protection to historic parks and gardens where there are associated listed structures.
- 2.3 There are currently 2,138 listed structures located within registered parks and gardens, the vast majority of which are an integral part of the registered area, including estate buildings, garden and boundary structures, and estate farm buildings. A significant majority — 328 out of the 386 parks and gardens on the Register — have listed buildings associated with them.

Conservation Areas

- 2.4 68 registered historic parks and gardens are included within conservation areas, either in whole or in part. These are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. There is a statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, and there are some specific controls, for example over demolition. Special provisions also apply to trees in conservation areas. Conservation area status is not considered appropriate as a means of protecting landscape features unless they are an integral part of the historic

built environment, and designation is not a means to control activities such as agricultural operations which do not fall within the definition of development. Nonetheless, several historic parks and gardens have been designated as conservation areas in their own right — these include urban public parks and some sites associated with private estates.

Scheduled Monuments

- 2.5 Scheduling provides statutory protection to ancient monuments considered to be of national importance. Scheduling protects sites from irreversible harm caused by damaging works but also encourages sympathetic management regimes and benefits from a system of condition monitoring. To date there has not been a systematic approach to the scheduling of garden features and the representation of garden features on the schedule is currently low. Examples on the schedule include ruinous garden features, such as the grottoes of the picturesque landscaping at Piercefield and Hafod, and relict gardens, i.e. ornamental and/or utilitarian gardens that are no longer in use for this purpose, such as the scheduled garden earthworks at Old Gwernyfed.

Development Management

- 2.6 A significant level of protection is also afforded to historic parks and gardens through the planning system. National planning policy for the historic environment is set out in Planning Policy Wales which states that local planning authorities should take the Register into account in preparing their development plans, and should protect parks and gardens and their settings; the effect of a proposed development on a park or garden, or its setting, may be a material consideration in the determination of a planning application.
- 2.7 The Welsh Government's Historic Environment Service (Cadw) is routinely consulted on planning applications affecting historic parks and gardens or their settings. Planning Policy Wales sets out that it should be consulted in all cases relating to grade I and II* sites, but in practice, Cadw is consulted on most cases, irrespective of grade, and it is anticipated that this practice will be continued.
- 2.8 These arrangements bring control over development requiring planning permission, which can be a significant cause of irreversible harm to the special interest of registered historic parks and gardens.
- 2.9 As part of the package of measures intended to support the Historic Environment (Wales) Bill, there will be specific guidance relating to the management of historic parks and gardens. This guidance will set out the general principles to consider when making changes to registered parks and gardens. Aimed at owners of historic parks and gardens and their agents, it will help them understand and care for their sites in accordance with conservation principles. This guidance will be subject to consultation.

Tree Preservation Orders

- 2.10 Local planning authorities have powers to protect specific trees, groups of trees or woodlands that have a significant impact on their local surroundings by issuing Tree Preservation Orders (TPOs). A TPO makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission. All types of trees can be covered by a TPO, including hedgerow trees, but excluding hedges, bushes and shrubs
- 2.11 TPOs can make an important contribution to the protection of historic parks and gardens.

Hedgerow Regulations 1997

- 2.12 These regulations aim to protect important hedgerows by controlling their removal through a system of notification. Under the regulations, it is unlawful to remove or destroy most countryside hedgerows without the written permission of the local planning authority. However, they do not apply to hedgerows within or adjoining the curtilage of a dwelling house and are therefore of limited application to historic parks and gardens.

Felling Licences

- 2.13 Felling licences are issued by Natural Resources Wales to help protect the forests and woodlands of Wales and to prevent indiscriminate felling. Cadw is consulted on any felling licences that may affect a scheduled monument or a registered historic park and garden. This provides an opportunity for Cadw to comment on proposals for felling and woodland management in registered historic parks and gardens and recommend, for example, sympathetic replanting.
- 2.14 Felling licences are not required in order to fell trees in a garden, orchard, a churchyard or a designated open space (Commons Act 1899), and are not needed for certain types of work (lopping, topping, pruning or pollarding). A licence is also not needed to fell less than five cubic metres in a calendar year or to fell trees below a certain diameter.

3. Management Arrangements

- 3.0 In addition to the regulatory regimes outlined above, registered historic parks and gardens can also benefit from a series of measures that encourage positive conservation management.

Agri-environment Schemes

- 3.1 Some registered parks and gardens benefit from the positive management and control associated with the Welsh Government's agri-environment scheme, Glastir. This is a 5-year sustainable land management scheme available to all farmers and land managers in Wales. It includes provision for managing and protecting landscapes and the historic environment.

3.2 Each of the component schemes available within Glastir includes specific provisions for the protection of historic parks and gardens, and a set of compulsory requirements (the Whole Farm Code) is particularly helpful in managing historic parks and gardens. The Whole Farm Code currently applies to a significant number of registered parks and gardens either in whole or part, and introduces the requirements to:

- Protect and retain all in-field and veteran trees.
- Retain traditional buildings and remnant structures.
- Avoid damage or disturbance to any historic park or garden on the register of historic parks and gardens. Damage includes any of the following:
 - Removal of historic plantings identified in the Register;
 - Removal or disturbance of structural or landscape features;
 - Remodelling of the landscape that results in the re-profiling of the topography; and
 - Dumping of material.

3.3 Glastir also provides for the improved management of land, which can include enhancement of registered historic parks and gardens, for example through tree planting, orchard restoration, planting individual native trees, and the management of scrub, saplings and intrusive vegetation.

3.4 Glastir requires that consent must be sought from Cadw where an applicant intends to undertake management involving ground disturbance such as fencing and tree planting on a scheduled monument or in a registered park and garden.

3.5 The Glastir scheme therefore provides safeguards that contribute to the maintenance and management of registered historic parks and gardens. Officials in the Welsh Government's Rural Affairs Department are continually looking to fill any gaps in the schemes to support the protection and management of the historic environment. For example, consideration could be given to the inclusion of registered parks and gardens (along with other historic environment features) within cross-compliance regulations.

Conservation Management Plans

3.6 Conservation management plans (CMP) are important tools for managing change in historic parks and gardens. A CMP provides a clear understanding of significance; identifies present risks/vulnerabilities and future opportunities; sets out how a site will be managed and maintained day to day and in the long term through the development of management policies. This long-term holistic approach to site management avoids inappropriate and ad-hoc change that may be detrimental to a site's historic character and significance. Heritage Lottery funding applications require CMPs, and some important public parks have benefited in this way.

HMRC Capital Taxation and the National Heritage

- 3.7 Conditional exemption from Inheritance Tax or Capital Gains Tax can be applied for on land of outstanding scenic, historic or scientific interest or buildings of outstanding historic or architectural interest. As part of these arrangements, a heritage management plan is normally required. This identifies the significance of the site, sets out how it is to be managed and maintained to preserve it in the condition that helped it to be granted heritage status and explains how public access will be provided and maintained. Some fifteen registered historic parks and gardens in Wales benefit from these arrangements.

4. Summary of Existing Arrangements

- 4.0 Current regulatory and management arrangements already provide a significant degree of protection for most historic parks and gardens. The ‘hard’ landscape features (follies, walls, etc.) can be protected by listing, and development is managed via the need for planning permission. There is also a mechanism for the protection of trees in some parks and gardens. There are no restrictions on domestic and other gardening work which constitute part of the day-to-day management of a site. In addition, there are several schemes that promote positive management as well as protection, and there may be scope to extend these in future. New guidance for the management of historic parks and gardens will promote good practice in the management of change according to conservation principles and will add weight to existing planning policy.
- 4.1 Existing regulatory arrangements do not provide a bespoke regime to control every piece of work or activity that could have an impact on the special interest of historic parks and gardens. Minor changes to a registered park or garden under permitted development rights, planting alterations, the felling of unprotected trees or the clearance of sites which do not enjoy any statutory protection are not regulated. A minority of sites are not covered by the consent regimes associated with other designated assets, but in all cases, a proportionate level of protection is afforded by the policy requirement to take the Register into account in the planning process.

5. Options for providing statutory protection for historic parks and gardens

- 5.0 Four options have been considered.

Option 1 — Place the Register of Parks and Gardens on a statutory basis but do not impose any new regulatory control over works and activities.

- 5.1 This option is what is currently proposed as part of the Historic Environment (Wales) Bill, which would place a statutory duty on the Welsh Ministers to maintain and enhance the Register. All historic parks and gardens that meet the published criteria would be included on the Register and be subject to the

development management requirements set out in Planning Policy Wales. The option would also place a duty on the Welsh Ministers to notify the owners and/or occupiers of a historic park or garden to make them aware of the registration and its implications.

Strengths

- 5.2 This option retains a proportionate level of protection for registered parks and gardens through the use of existing statutory controls relating to other designated assets where applicable, and in all cases, through the regulation of development via the requirement for the Register to be taken into account in the planning process. It does not regulate domestic and other gardening works, or other works that are concerned with the day-to-day management of such sites.

Weaknesses

- 5.3 This option does not restrict the making of minor changes to a registered park or garden under permitted development rights, planting alterations, the felling of unprotected trees or the wilful or inappropriate clearance of sites. Any of these could theoretically occur where there are no designated assets with their own consent regimes. There is, however, no evidence to suggest that significant harm is being caused by unregulated activity.

Costs

- 5.4 The primary costs for this option would fall on the Welsh Ministers, arising from the duty to notify all owners and occupiers of the inclusion of their sites on the statutory register. The cost analysis has been included within the Regulatory Impact Assessment accompanying the Historic Environment (Wales) Bill and is provided at Annex 1.

Option 2 — Introduce a statutory duty to have special regard to the desirability of protecting registered parks and gardens when undertaking any function under the Planning Acts

- 5.5 This option would impose an additional statutory duty on local planning authorities and the Welsh Ministers to have special regard to the desirability of protecting registered historic parks and gardens when undertaking any function under the Planning Acts, including the determination of planning applications and the preparation of local development plan policies. It is already a requirement of planning policy that local planning authorities should protect registered historic parks and gardens; making this a statutory duty would not in itself introduce any additional protection.

Strengths

- 5.6 Formalises and possibly strengthens existing provisions in planning policy by introducing a statutory duty.

Weaknesses

- 5.7 A new provision along these lines would not introduce any new regulatory controls, and would not add anything to existing national policy concerned with development control and the protection of historic parks and gardens. This

policy framework already operates effectively, and will be strengthened by the introduction of guidance for the management of historic parks and gardens which will itself help inform the planning process, and there is no evidence to suggest that a new provision is necessary.

- 5.8 The introduction of a statutory duty would increase the legislative complexity of the planning system without increasing the existing level of protection afforded to registered historic parks and gardens.

Costs

- 5.9 The principal costs of discharging such a duty would be closely tied to the need to obtain specialist advice in determining an application for planning permission. There is currently insufficient expertise of this sort within local planning authorities to assist in the determination of planning applications and the most cost effective mechanism of providing such advice would be through consultation with Cadw. Putting this consultation on a statutory footing would involve only limited additional cost, as Cadw already provides advice in most cases where a registered historic park and garden or its setting is affected by a proposed development that is the subject of a planning application. Similarly, this option should involve no additional cost for an owner, since it merely formalises existing arrangements set out in policy.
- 5.10 The introduction of a statutory duty could necessitate a formal process of consultation with owners of parks and gardens on the register, together with a process of review. The costs to the Welsh Government are estimated to be in excess of £96,000 for the consultation exercise, and in the region of £90,000 for review (based on an assumption that a review would be requested in 5% of cases). Therefore, the total cost to the Welsh Government associated with introducing this option is likely to be at least £186,000.

Option 3 — Use existing legislation for scheduling monuments, and the proposed revised definition of a monument under the Historic Environment (Wales) Bill, to facilitate the statutory protection of registered parks and gardens as scheduled monuments.

- 5.11 The proposal within the Historic Environment (Wales) Bill to extend the definition of a monument to include '*any thing, or group of things, that evidences previous human activity*' could enable historic parks and gardens to be protected through scheduling. This would introduce a requirement to obtain scheduled monument consent for a range of works that could affect the special interest of a site (including for example, the removal of structural or landscape features or historic planting). Existing legislation includes provisions for permitted works to scheduled monuments (known as class consents) which could exempt certain agricultural, horticultural or forestry operations from the need to apply for consent. There is also scope for the introduction of management agreements.

Strengths

- 5.12 This option would provide a consistent approach to regulation for all sites, irrespective of whether or not there are designated assets with their own

consent regimes, and would also make it possible to regulate activities that fall outside the scope of other regulatory systems.

Weaknesses

- 5.13 The specific characteristics of historic parks and gardens mean that they would not fit comfortably in a regulatory regime designed for relict sites, where the policy objective is preservation in situ. The significant living component of parks and gardens requires a more flexible regime that allows sites to evolve. Furthermore, identifying a suite of permitted works (class consents) applicable to the diversity of site types and management regimes would be complex and challenging.
- 5.14 Many of the activities that it would be appropriate to regulate (because of their capacity to damage the special interest of historic parks and gardens) are, in practice, already regulated under: existing arrangements for development management which apply in all cases; designated asset consents, TPOs and other controls where they are applicable, and Glastir provisions. The introduction of another regulatory requirement would be complicated and confusing.

Costs

- 5.15 It is estimated that considerable additional costs would fall on owners/occupiers and on the Welsh Ministers, who already administer the legislative system concerned with the scheduling of monuments, including designation and review, scheduled monument consent, management agreements, condition monitoring and enforcement.
- 5.16 Owners would need to apply for scheduled monument consent to undertake certain categories of work and might need to appoint a specialist to explain and justify the approach that is being taken to respect the historic park and garden. It is estimated that this would cost in the region of £500 – £1500 in each case, but costs could be higher for more complex applications.
- 5.17 This option would also involve significant costs to the Welsh Government. In advance of scheduling, every site would have to be resurveyed in order to identify its significant features, and the owner/s would have to be consulted. Applications for scheduled monument consent would have to be determined, and, in some cases, management plans developed. A monitoring regime would also need to be established.
- 5.18 The regulatory impact assessment accompanying the Historic Environment (Wales) Bill estimated (paragraph 327) that it costs the Welsh Government approximately £630 to schedule a monument. On this basis, the scheduling of the 386 parks and gardens on the register would cost at least £250,000. However, the costs are likely to be significantly higher than this because historic parks and gardens are typically large land areas of composite character and, on average, are estimated to be at least 10 times the area of a typical scheduled monument. Allowing for economies of scale, it is suggested that the baseline survey analysis and administrative costs per park and garden is five times that of a typical scheduled monument. Consequently, it is estimated that

the process of scheduling of 386 parks and gardens could cost in the region of £1.25 million.

- 5.19 The proposed legislation will allow owners of scheduled sites to request a review of the decision to designate. It has been estimated within the Regulatory Impact Assessment that 5 per cent of all designations would need to be reviewed; the review process has been calculated to take 3 days at a cost of £750 per day. Again, the size of a registered park and garden is such that a review could take up to twice this time. Assuming that reviews were requested for 5 per cent of the 386 sites on the Register, and allowing 6 days at £750 per day for each, this process could cost in the region of £90,000.
- 5.20 There would also be annual costs associated with handling applications for scheduled monument consent (perhaps in the region of 30 applications per annum), condition monitoring, enforcement processes and any management agreements. This would require the employment of at least one additional specialist within the Cadw team and additional administrative and handling costs. The annual cost of this specialist and administrative workload is estimated to be £70,000.
- 5.21 If the arrangements were established over a period of 5 years, it is estimated that the annual additional set up costs to the Welsh Government would be in the region of £268,000 (largely for scheduling and review) during that period. There would be ongoing costs of approximately £70,000 a year thereafter (for determining consents, enforcement and monitoring condition etc).

Option 4 — Introduce a new bespoke legislative framework comparable to listed building and scheduled monument consent where it would be a criminal offence to do anything that would alter the character of a registered park and garden without first obtaining registered park and garden consent.

- 5.22 This option would introduce a bespoke system similar to that mentioned within Option 3 but with its own policy objective that would reflect the need to manage change rather than preserve a site in situ. It would require the introduction of a completely new regulatory system, with a consents regime, appeals process, condition monitoring and enforcement procedures, and could potentially also include provision for urgent works, repairs notices, etc.

Strengths

- 5.23 This option would extend a regulatory regime to all sites, and would therefore include sites where there are no existing statutory designations. It could also provide the means to control all activities which could be potentially damaging to the special interest of historic parks and gardens.

Weaknesses

- 5.24 The weaknesses of Option 3 identified in paragraphs 5.11 and 5.12 apply with equal force here. Identifying an appropriate and proportionate system of control applicable to the diversity of site types and management regimes would also be complex and challenging.

Costs

- 5.25 Local planning authorities do not currently have the expertise to administer such a system, and it would therefore fall to the Welsh Ministers to act as the regulatory body with the specialist expertise provided by Cadw.
- 5.26 The scale of the costs for this option will be similar to those for outlined for Option 3 (in paragraphs 5.14-5.19 above)– such as the costs of formal designation including the process of consultation and review, as well as the ongoing costs of managing a entirely new consent regime. There would also be significant costs on owners for making specific historic parks and gardens consent applications and seeking appropriate specialist advice. Again, as for Option 3, this is likely to be in the region of £500-£1500 per application.
- 5.27 However, it is suggested that the costs of establishing such a regulatory system under Option 4 might be significantly higher than Option 3, because it would be an entirely new regime – rather than an adaptation of the existing scheduling system. For example, if the arrangements were established over 5 years, the additional set up costs to the Welsh Government for this option is likely to be considerably more than the £268,000 per annum quoted for Option 3. It is suggested that the ongoing annual costs of supporting and administering the regime would be similar to those for Option 3, involving the employment of an additional specialist plus administrative support – that is £70,000 per annum.

6. Summary

- 6.0 **Option 1** — Registered historic parks and gardens already have a high level of protection wherever associated structures have been designated through listing (or in some cases, scheduling), or where the sites are included in conservation areas. There is also a significant level of control applied through the planning system, and an important suite of protection and management measures available through Glastir. There are some gaps in protection (for example where historic parks and gardens are not associated with any other designated assets, or where potentially damaging activities do not fall within the scope of existing regulation), but the introduction of best-practice guidance, together with closer engagement with owners, will narrow these gaps.
- 6.1 **Option 2** — It is questionable whether a new statutory duty, for the desirability of protecting registered historic parks and gardens in the exercise of planning functions, would carry more weight than the current policy requirement in the existing planning system. The existing policy framework appears to work well. It will be strengthened by the proposed guidance, which will serve a similar purpose to a statutory duty by ensuring that proper consideration is given to the significance of historic parks and gardens in determining planning applications. Cadw will also be providing specialist advice on all planning applications affecting a registered park and garden and its setting.
- 6.2 **Options 3 and 4** — The policy gain from Options 3 and 4 would be the imposition of tighter regulations on owners by requiring prior consent for any change to a park or garden over and above the constraints already imposed by the existing controls. The need for such controls is unproven, and it is therefore

considered that additional regulation would place an unjustified and disproportionate constraint on the rights of owners to enjoy their property. It would also be a complex and expensive system to administer, as it would have to be carefully tailored to individual sites so as not to impede the varying requirements of day-to-day management and maintenance on living sites.

- 6.3 In the absence of compelling evidence of need, it might be considered unreasonable to proceed with Options 3 and 4— with the attendant additional cost of a regulatory system – at this stage. The estimated cost of introducing regulatory controls is estimated to be in the region of £1.34 million over 5 years (that is £1.25 million plus the £90,000 for the review process), and subsequent annual costs of approximately £70,000, and this is unaffordable at the moment. The need for such a costly system of controls is at present unproven.

Historic Environment Service (Cadw), November 2015

Annex 1

Extract from the Regulatory Impact Assessment accompanying the Historic Environment (Wales) Bill

Costs — Placing the *Register of Historic Parks and Gardens* on a statutory basis.

The Welsh Government

The primary costs for this option would fall on the Welsh Ministers and arise from the duty to notify all owners and occupiers of inclusion on the register. There are currently 382 sites included on the *Register of Historic Parks and Gardens* in a variety of types of ownership as summarised, based on Cadw's current knowledge, in Table 5.

Table 5 — Ownership of historic parks and gardens in Wales.

County	Ownership type								
	Single						Divided	Multiple	Totals
	WG	LA	CB	HO	IO	PO			
Gwent	1	12	4	11	5	22	8	1	64
Clwyd, excl. part of Conwy/Powys	2	5	6	24	3	24	2	3	69
Conwy, Ynys Mon, and Gwynedd	1	5	6	12	7	25	6	3	65
Powys	1	4	4	14	6	20	2	1	52
Glamorgan	4	36	4	5	4	8	5	4	70
Carms, Cere, and Pems	4	5	10	12	5	17	10	3	66
Totals	13	67	34	78	30	116	33	15	386

Key:

WG: The Welsh Government or other government bodies, e.g., NHS.

LA: Local authority, primarily urban and country parks.

CB: Charitable bodies, largest number with the National Trust.

HO: Hereditary owners who have held the estate for 100 years or more.

IO: Institutional owners, mainly hotels, schools and golf courses.

PO: Private owners who have held the site for less than 100 years.

Divided: Where a park and/or garden is held by two owners.

Multiple: Sites with more than two owners.

Cadw estimates that the notification procedure, plus any necessary follow-up site meetings to resolve queries, will require an annual staff cost of some 0.5 whole time equivalent (WTE) at Management Band 2, plus a similar level of administrative support at Management Band 1. It is proposed that the process will be carried out over a two-

year period giving staff and travel costs of some £21,200 in 2016–17, rising to some £22,200 the following year. Once this phase of work has been completed there would be no additional ongoing costs.

The Welsh Government is also developing a publicly available, searchable, online mapping portal that will show the location and boundaries of registered historic parks and gardens. This will help to make successive owners aware of the registration of a historic park or garden. The development of this tool is independent of the Bill, so the development costs are not included here.

Local planning authorities and owners

The addition of 14 complete sites and 7 additional parts to existing entries on the register will mean that national planning policies for the protection of historic parks and gardens will thereafter apply to them. Additional consideration will consequently be needed when making and determining any planning application. Should a planning application be made for any of the additional sites to be included on the register, the LPA will need to include Cadw and any nominated advisory body in its list of consultees.

Benefits

Placing a duty on the Welsh Ministers to compile and maintain the *Register of Historic Parks and Gardens* will ensure that the arrangements established under the current voluntary regime will be sustained for the future. The inclusion of all historic parks and gardens, including the small number for which owners withheld permission when the county volumes were published between 1994 and 2007, will ensure equal treatment under the development control system. A duty on the Welsh Ministers to notify owners and occupiers that sites have been included on the register, together with up-to-date guidance and online mapping, will ensure that all are fully aware of the potential constraints on their land under the development control system.

Summary

Placing the Register of Historic Parks and Gardens on a statutory basis would ensure that the *Register of Historic Parks and Gardens* is a comprehensive and sustainable resource for the appropriate management of Wales' historic environment in the future. It would also result in a transparent and equitable system of constraints for the owners and occupiers affected. The notification process would involve additional costs for the Welsh Government, but these will be achievable within existing programme budgets.

Table 6 — Additional costs to the Welsh Government

	2016/17	2017/18	2018/19	2019/20	2020/21
Staff costs	£18,700	£19,700	–	–	–
Travel	£2,500	£2,500	–	–	–
Guidance	£5,000	–	–	–	–
Total	£26,200	£22,200	–	–	–