

**The Historic Environment (Wales) Bill: Written Evidence to the Legislation, Justice  
and Constitution Committee  
Dr Hayley Roberts, Bangor University  
September 2022**

**Introduction**

I am an international lawyer specialising in the law of the sea, particularly underwater cultural heritage and climate change. In the context of this submission, I have published several papers on underwater heritage and have a monograph on ‘State-owned Shipwrecks and International Law’ forthcoming in 2023 (University of Wales Press). I have just completed a research council-funded project examining the protection of marine cultural heritage and climate adaptation policies in Tanzania. I am also Commissioner (Vice Chair) to the Royal Commission on the Ancient and Historical Monuments of Wales; however, I do not make this submission in that capacity.

The submission below relates to two points that the Committee wishes to scrutinise in relation to the Bill: that the Bill consolidates the law clearly and consistently, and that the relevant enactments have been included within the consolidation.

**Submission**

1. The consolidation of law relating to the historic environment in Wales is a very welcome development, particularly given the aim of making that law accessible and available in Welsh. The mammoth effort in preparing this Bill should be commended, which goes a long way towards clarifying this complex area of law.

**Terminology**

2. The move away from ‘ancient’ monuments is a welcome step that better reflects the importance of more recent heritage, including twentieth century heritage and buildings.

3. The new term adopted in Part 2, Chapter 1 of the Bill is ‘monuments of special historic interest.’ While ‘monument’ is defined, ‘special historic interest’ is not. It is not clear what makes a monument of ‘special’ historic interest, and whether this is a qualifier that could alter the way in which a monument’s significance is currently assessed - and if so, in what way.

4. Part 2, Chapter 2 uses the term ‘monuments of national importance.’ It is unclear whether this has effectively the same meaning as ‘monuments of special historic interest’ or if it anticipated that there will be instances where a monument is of national importance but not of special historic interest (or vice versa). The use of both terms is somewhat confusing and could reduce accessibility, i.e., people may be unsure whether they are dealing with a monument of special historic interest or a monument of national importance, and what the difference might be in respect of the law.

5. A better approach may be to adopt a single, more inclusive term that ensures clarity and consistency in the Bill. The historic environment has multiple values: historical, evidential, aesthetic and communal, but also cultural, societal, scientific and environmental. A broader term could also ensure that these values are better reflected, for example, ‘monuments of historic or cultural interest’ or simply ‘monuments of Welsh national interest’ if wanting to retain the national reference.

### ***Wrecks/Maritime Heritage***

6. Much of the law relating to the marine historic environment sits outside this Bill. For example, the Protection of Wrecks Act 1973 (PWA) and the Protection of Military Remains Act 1986 (PMRA) are not included. There are also aspects of the Marine and Coastal Access Act 2009 (MCAA) that are directly relevant to the marine historic environment, i.e., activities that may impact underwater heritage and for which a marine license is required.

7. This means that there is little consolidation of the law relating to the marine historic environment, and ultimately, accessibility remains an issue. For example, if a person wants to engage in an activity that involves a shipwreck, they will still need to look at the PWA if it is a protected or dangerous wreck, consult the PMRA if it is a military wreck, and check the MCAA to see if a marine license is needed for the activity.

8. There is a separate but related argument to be made about whether Section 1 of the PWA should be repealed and the six Welsh protected wrecks re-designated, or rather, re-scheduled. The PWA began its life as a private member's bill, and it is fair to say that it was a reactive measure to protect wrecks following technological developments that enabled easier exploration of the seabed during the 1960s and 1970s. Scotland has already taken action by repealing Section 1 PWA and re-designating its protected wrecks as Historic Marine Protected Areas under the Marine (Scotland) Act 2010.

9. If the PWA has been excluded from the Bill due to the small number of wrecks in question and the likelihood that the PWA would not be utilised in future (i.e., if Welsh policy going forward will be to schedule subtidal monuments), then the need to retain that statute needs to be considered. If it can be shown that re-scheduling the protected wrecks can offer comparable protection and access as appropriate, it would be worth considering the repeal of Section 1 PWA. This could also remove any confusion between designation and scheduling, further improving accessibility of the law.

10. However, if there is no appetite to repeal Section 1 PWA, or it is determined that it offers greater benefits than scheduling for these wrecks, then it should be included in the Bill, and it could easily be incorporated.

11. It should also be noted that Section 2 of the PWA deals with the designation of wrecks as dangerous, which includes the SS *Castilian* off the coast of Anglesey as it contains munitions. This should be included in the Bill and again, could easily be incorporated. Scotland has not repealed Section 2 PWA.

12. The PMRA is also a key statute. While the protection of human remains and wrecked warships may be separate but related issues, remains should also be considered cultural heritage. This is clear from the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, which makes it clear in Article 1(a)(i) that human remains, together with their archaeological and natural context, can constitute underwater cultural heritage where they have been submerged for at least 100 years.

13. While the UK has not yet ratified the UNESCO Convention, the rules in its Annex on activities directed at underwater heritage are internationally considered to constitute best

practice.<sup>1</sup> Much of the wreckage to which the PMRA applies is very likely to constitute underwater cultural heritage, so the Act is directly applicable to the protection of the marine historic environment. For example, HMS *H5* is a First World War submarine that lies off the coast of Anglesey and is designated as a controlled site under the PMRA. Further, the PMRA also applies to any aircraft which has crashed while in military service.

14. To aid accessibility of law relating to the marine historic environment, the Bill could include a specific part on the marine historic environment that consolidates the points above.

---

<sup>1</sup> See, for example, H. Roberts, 'The British Ratification of the Underwater Heritage Convention: Problems and Prospects' (2018) 67(4) *International & Comparative Law Quarterly* 833.