



8<sup>th</sup> September 2022

Our ref. 0906JE03/ALGAO\_004

[REDACTED]  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

Dear [REDACTED]

### **Scrutiny of the first Welsh Consolidation Bill – the Historic Environment (Wales) Bill**

We write in response to the consultation letter of 15<sup>th</sup> July 2022 inviting comments on the above.

#### About ALGAO

The Association of Local Government Archaeological Officers (ALGAO) is the UK-wide organisation that represents all archaeologists working for local authorities and national parks. Member local authorities are represented by the senior professional archaeologist (employed directly within the authority or in some cases by independent joint services) whose primary responsibility is to advise that authority, principally through the planning process, on conservation and management of the archaeological resource within the boundaries of that authority, and who has been nominated by that authority to represent it. The Association has four key objectives:

- To provide a strong voice for local authority historic environment services and promote these within local government to strengthen and develop their role within local government in delivering local, regional and national government policy.
- To ensure that local government historic environment services are included within policy (national, regional and local) for culture and education.
- To ensure that policy aims to improve the sustainable management of the historic environment.
- To promote development of high standards in the historic environment profession

ALGAO:Cymru is the national ALGAO body for Wales. The membership of ALGAO:Cymru comprises archaeologists who work in a curatorial capacity within the four Welsh Archaeological Trusts as well as archaeologists working for local authorities and Wales' three national parks. Members provide archaeological advice on activities carried out through the planning process, environmental permitting regimes, statutory provisions and other regulatory processes. The proposed consolidation of legislation is therefore of direct relevance to members' work.



## Consultation response

ALGAO:Cymru generally supports the proposed consolidation and welcomes the opportunity to contribute to this process. Our comments on the specific points listed in the consultation letter of 15<sup>th</sup> July 2022 are set out below. Please note that these comments are based on members' experience as historic environment professionals rather than any legal expertise.

- i. we are satisfied that the scope of the consolidation is appropriate;*  
ALGAO:Cymru considers the scope to be appropriate.
- ii. we are satisfied that the relevant enactments have been included within the consolidation;*  
ALGAO:Cymru believes this to be the case.
- iii. the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;*  
ALGAO:Cymru generally agrees that this is the case but considers that some minor changes may have the unintended effect of weakening protection for the historic environment. It is recommended that the following changes to provisions are examined so that the Committee can be satisfied that the existing regulatory framework is not undermined:
  - **Section 97 (5)** carries forward the legal right of the RCAHMW to be given the opportunity to record a listed building proposed for demolition, currently provided by Section 8(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, but proposed to be enshrined as an obligatory condition. Whilst this may initially appear to be a strengthening of provision, there is a potential for conflict or duplication with current planning practice.

The principle of allowing access for archaeological recording in advance of development predates the inclusion of archaeology as a material planning consideration and the establishment of structured procedures for archaeological work in a development context. These procedures are set out clearly in both local and national policies, and include the ability for local authorities to require archaeological work at all stages of the planning process. In members' experience it has been relatively uncommon for the RCAHMW to undertake emergency recording through the planning and listed building consent process in recent years. It is however commonplace for conditions requiring archaeological building recording to be attached to consents, which would normally be undertaken by an archaeological contractor, commissioned by the applicant. This can often be more comprehensive and analytical than the RCAHMW emergency recording, where limited resources necessitate the prioritisation of high quality survey and images.

The explanatory notes<sup>1</sup> for the change draw a parallel with the scheduled monument consent process (Section 18 *Power to grant consent subject to conditions*). The two are not directly comparable, because scheduled monument consent is independent of planning, and administered by Cadw rather than local authorities. In addition, the wording of the proposed Section 18 is more flexible, discussing what conditions *may* be applied and does not name a specific organisation. In practice, archaeological mitigation undertaken as a condition of

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1 Explanatory Memorandum Annex C: Explanation of Changes Made to Existing Provisions (Drafters' Notes), p.34 - <https://senedd.wales/media/fedpgiaa/pri-ld15211-em-c-e.pdf>



scheduled monument consent is comparable to planning-led work, generally undertaken by archaeological contractors to an agreed programme and monitored by Cadw. It is not clear if an equivalent process would be followed for a listed building consent condition allowing access for recording by the RCAHMW. The scope of such work can vary considerably, and submission of a detailed project specification for prior approval by the local authority is normally required in order to meet the test of precision.

ALGAO:Cymru is concerned that including the right of access for the RCAHMW as a condition could prevent local authorities from attaching separate conditions for archaeological building recording, because this could be regarded as duplication and thus fail the test of necessity. Without this ability, were the RCAHMW to decline to record a threatened building, there would be no means of securing proportionate mitigation. The resulting loss to built heritage and archaeological evidence would conflict with objectives to manage the historic environment as a public resource for the benefit of current and future generations.

ALGAO:Cymru would therefore recommend that this matter is reviewed to ensure that there would be no reduction in powers to secure archaeological mitigation.

- **Section 194(1)** *The Welsh Ministers must maintain a historic environment record for every local authority area* replaces Section 35(1) of the Historic Environment (Wales) Act 2016, *The Welsh Ministers must compile and keep up to date a historic environment record for each local authority area in Wales.*

The explanatory notes<sup>2</sup> state that this alteration to wording has been made because “records have already been compiled, and the requirement to maintain is consistent with other provisions of the Bill (the duty to maintain a schedule of monuments, for example)”. However, the proposed provisions for scheduled monuments, listed buildings, registered historic parks and gardens, and historic place-names all include the requirement to maintain and publish the up-to-date schedule, list or register. Omission of this phrase is therefore inconsistent with the duties applicable to other assets.

More importantly, however, Historic Environment Records (HERs) are complex information management systems with thousands of new entries added each year. They need active management, not only to incorporate new data, but to curate existing digital and archive material, and to advise enquirers on its usage. The requirement in existing legislation to 'keep up to date records' is crucial in securing the resources for HER staff and ensuring that the HERs are fit for purpose as the statutory evidence base for planning decisions and other activities by public bodies. Simplifying wording to 'maintain' – particularly set against the phrasing used elsewhere in the Bill - could be interpreted as meaning that the HERs are complete, or a static archive. With continuing pressure on public funds, this perception could result in HERs being mothballed or under-funded, causing potential loss of HER staff with associated expertise, and an inadequate evidence base for heritage management advice: this in turn would lead to increased threat to undesignated archaeology and increased risk to development through unforeseen discovery.

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2 Explanatory Memorandum Annex C: Explanation of Changes Made to Existing Provisions (Drafters' Notes), p.63 - <https://senedd.wales/media/fedpgiaa/pri-ld15211-em-c-e.pdf>



ALGAO:Cymru would therefore urge the new Bill to retain the specific requirement to keep HERs up to date.

*iv. the Bill consolidates the law clearly and consistently*

ALGAO:Cymru believes this to be the case.

It may be beneficial to clarify whether references to demolition include partial demolition (or if this is stipulated in other legislation, to include a note to this effect).

Yours faithfully



**Jenny Emmett (Chair) and Tomos Jones (Vice Chair)**  
ALGAO:Cymru