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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill
Ymateb gan: Ymddiriedolaeth Archaeolegol Clwyd–Powys
Response from: Clwyd–Powys Archaeological Trust

19 June 2015

Committee Clerk
Communities, Equality, and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Sir/Madam

Consultation: Historic Environment (Wales) Bill

Thank you for the opportunity to provide additional evidence to the Committee on the Historic Environment (Wales) Bill (hereafter referred to as 'the Bill'). This letter follows an earlier outline response which was submitted on 22nd May 2015, and should be read in conjunction with it. Overall we support the direction that the Bill is taking, but have some specific areas of concern where we feel that the Bill could afford greater protection to the historic environment. This letter describes these in more detail, under the terms of reference set out in the letter from Christine Chapman AM dated 8th May 2015.

1. *Clwyd-Powys Archaeological Trust*

- 1.1 The Clwyd-Powys Archaeological Trust (CPAT) is an educational charity which was established in 1975. Its objective is 'to advance the education of the public in archaeology', and it achieves this with the support of funding from a variety of sources, including Welsh Government. CPAT is one of four Welsh Archaeological Trusts (WATs) which work to help protect, record and interpret all aspects of the historic environment. This includes the provision of advice to local authorities on archaeology and planning, the maintenance of the regional Historic Environment Record (HER), undertaking archaeological projects for private- and public-sector clients, and delivering a programme of community archaeology events and activities.
- 1.2 Governance of the Trust is through a Board of Trustees, which meets four times per year. Other activities of the Trust are advised by an Ethics Committee, an Investment Committee, and the Board of Directors of the CPAT HER Charitable Trust. As an independent Charitable Trust we submit publicly-accessible annual accounts to the Charities Commission, and as a limited company we file returns to Companies House. CPAT is a Registered Organisation with the Chartered Institute for Archaeologists.

2. *The general principles of the Historic Environment (Wales) Bill and the need for legislation.*

- 2.1 As previously noted we support the general principles of the Bill. We accept that this is largely an amendment of existing legislation, rather than entirely new legislation. However, we feel that the proposed Bill is workable, and that its approach strikes a sensible balance between the need to legislate and the resources required to produce and implement that legislation.
- 2.2 An important element in the future success of the Bill will be the supporting policy and guidance documents. At the time of writing, the existing drafts do contain some inconsistencies, but we understand that there will be a further process of consultation specifically for these elements at a later stage in the process.
- 2.3 Another important consideration must be the way in which the Bill works with other legislation, and in particular the Planning (Wales) Bill which has now completed its period of intimation.
- 2.4 A further relationship which should be considered in due course is the position of Landscapes of Special Historic Interest in Wales which currently have no statutory status. Welsh Government has established a Panel which is currently reviewing recorded and designated landscapes and amendments to existing legislation concerning these landscapes might subsequently be considered. In that event the position of Landscapes of Special Historic Interest in Wales ought to be reviewed.
- 2.5 We are also disappointed that it has not been possible to enhance the status of World Heritage Sites, and we hope that this will be given further consideration in the preparation of supporting policy and guidance, and in future legislation.

3. *Giving more effective protection to listed buildings and scheduled monuments.*

- 3.1 The Bill will give more effective – and more consistent – protection to listed buildings and scheduled monuments. However in some areas the protection it confers could be stronger, as outlined below.
- 3.2 As noted previously the extension of the definition of Scheduled Monuments is welcome, and should enable the protection of important features that are not currently Schedulable.
- 3.3 We are concerned that the defence of ignorance, although weakened, remains in the Bill. Thus in Section 15 (Control of works affecting scheduled monuments) the proposed insertion at 8A does not remove the defence of ignorance. Similarly in Section 17 of the Bill (Restrictions on the use of metal detectors) the proposed insertion at Subsection 8 potentially allows a defence of ignorance. We believe that damage to a Scheduled Monument should be

strict liability offence, and that these insertions should be amended to reflect that.

- 3.4 On the question of metal detecting, we are also concerned that paragraph A.15 in Annex 1 of TAN 24 allows for Scheduled Monument Consent to be granted for metal-detecting for ‘the recovery of valuable items of modern lost property’. This is a potential loophole which could enable damage to occur under false pretences, and it would be better if that part of paragraph A.15 could be removed.
- 3.5 We welcome the revisions to stop notices and enforcement notices, as set out in Section 12 of the Bill.
- 3.6 We welcome the power of entry for the archaeological excavation of monuments under threat (Section 19). It would be helpful to include the same provision for Listed Buildings. Paragraph 6.5.16 of Planning Policy Wales Chapter 6 places an obligation on local authorities to notify the Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) of ‘all proposals to demolish listed buildings’. However in practice it may not be possible for RCAHMW to undertake this work, and so we feel that this paragraph should be amended to include the WATs and other appropriate bodies or individuals. Furthermore there may well be instances where a demolition proposal is not made, but a building is under threat of demolition, collapse or the loss of significant fabric through neglect or eventualities (such as fire). In such cases it would be prudent to allow power of entry for the emergency recording of Listed Buildings, as has been proposed for Scheduled Monuments.
- 3.7 We welcome the introduction of Heritage Partnership Agreements, and have further comments on these at 4.4 below. However it is disappointing to see that the opportunity has not been taken to further reform Ancient Monument Class Consents. As noted in Annex 1 of Technical Advice Note 24 (TAN 24), these will still include ‘agricultural, horticultural and forestry works’. We also note that Class Consent for ‘the placing of survey markers ... for the purpose of measured surveying’ is confined to the RCAHMW, but should include other bodies which undertake these works, such as the WATs.

4. *Enhancing existing mechanisms for the sustainable management of the historic environment.*

- 4.1 Overall the Bill will enhance mechanisms for the sustainable management of the historic environment. However in some areas the wording of the Bill and supporting guidance could be improved.
- 4.2 The references in Section 3 of the Bill to the Schedule note the existence of ‘a map maintained by Welsh Ministers’ [1AA(1)(c)] and an ‘electronic ... list’ [1AB(6)(a)]. Greater clarity would be useful as to the relationship between the two things, or whether they are the same thing, and where this list/map is held, and which version of the list/map is the definitive one.

- 4.3 One of the most significant, and most welcome, measures in the Bill is the statutory requirement for local authorities to maintain HERs. The four regional HERs in Wales represent a unique resource in the UK, having been developed and curated in a coherent way by the four WATs over four decades. This offers excellent value for public money due partly to the economies of scale, and partly because of the expertise held within the WATs. It is assumed that the current system, in which the WATs discharge this duty on behalf of the local authorities, will be continued. However this is not made explicit in the relevant Sections (33-36) of the Bill, although it is implied in Section 35 and is referred to in Paragraph 1.18 of TAN 24. We very much welcome the additional funding to support this resource, which is identified in Paragraph 468 of the Explanatory Memorandum. We believe that this £20,000 per Trust, in addition to existing Cadw grant-aid, is sufficient to maintain a full time HER Officer post. We also welcome Cadw's involvement in ensuring that the agreements between local authorities and the WATs will be consistent across Wales.
- 4.5 The proposal for Heritage Partnership Agreements is very welcome. In practice these may only be applicable in a small number of particular circumstances (such as upland areas or areas of forestry), nevertheless in those situations they will prove useful in enabling long-term sustainable management of a group of designated heritage assets.
- 4.6 As noted previously we welcome the creation of a statutory register for historic parks and gardens.

5. *Introducing greater transparency and accountability into decisions taken on the historic environment.*

- 5.1 The Bill will introduce greater transparency and accountability into decisions taken on the historic environment, and we welcome those measures.
- 5.2 The creation of the Advisory Panel for the Welsh Historic Environment, as noted in Sections 37 and 38 of the Bill is useful. The remit, composition and appointment of this panel will hopefully ensure that its functions do not overlap with existing groups, such as the Historic Environment Group (HEG). The new Panel would to some extent restore the independent advice formerly provided to Welsh Government by the Ancient Monuments Advisory Board and the Historic Buildings Advisory Council, and would also give a wider strategic viewpoint which would be very valuable. This would be enhanced if the new Panel could include members from outside the historic environment sector, from outside Wales, and indeed from outside the UK, where appropriate.
- 5.3 We welcome the various measures to improve consultation, interim protection and review for designations. The modifications to the Scheduled Monument and Listed Building Consent processes (Sections 3-10, 24-26 and 29) make the two systems more closely aligned. The relaxation of the conditions for an application for a certificate of immunity from listing (Section 27) should be helpful in delivering sustainable regeneration.

5.4 We also welcome the reference throughout TAN 24 to the Standards and Guidance produced by the Chartered Institute for Archaeologists (CIfA). This will help to ensure that organisations and individuals undertaking work on the historic environment in Wales are suitably qualified and experienced, and that the public interest is protected through an independent Chartered professional institute.

6. *Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them.*

6.1 As noted above, there are potential issues with resourcing the powers of protection for Scheduled Monuments. The costs identified in the Explanatory Memorandum appear to be reasonable and adequate for the preferred options, but may need reconsideration if the suggestions made above (particularly at 3.3) are implemented.

7. *Whether there are any unintended consequences arising from the Bill.*

7.1 The strengthening of Scheduled Monument protection in Wales is very welcome. This does however introduce the potential for a monument situated in both Wales and England to be treated differently in law. Offa's Dyke, for example, provides a situation where landowners may own parts of the same monument in both countries, and where damage to the monument may result in different legal outcomes. However this is a reason for Wales to lead the way in strengthening the legislation, in the hope that England will follow suit, rather than the other way around.

7.2 There remains the theoretical possibility for an individual local authority to set up its own HER. However resourcing and quality issues make this unlikely, as will Cadw's work on helping to ensure consistency in the transitional period in 2016-2017 (as noted at 4.4 above).

8. *The financial implications of the Bill.*

8.1 Please see the comment at 6.1 above.

9. *The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation.*

9.1 We feel that these powers are appropriate.

Yours sincerely

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Clwyd-Powys Archaeological Trust