

HE 23

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill
Ymateb gan: The Georgian Group
Response from: The Georgian Group

Introduction

The Georgian Group welcomes the opportunity make this submission to the committee. The Georgian Group is a statutory amenity society in England and Wales. We must by law be consulted on any planning applications affecting listed Georgian buildings, monuments, parks and gardens, of which there are about 6000 every year in (England and Wales).

There are a number of listed Georgian buildings in Wales, many of which are unwanted and unfortunately unsalable. We have identified around 50 Georgian houses in the Welsh countryside that are currently at risk. Local Authorities have a record of not using their powers, including never issuing CPO notices, and rarely using repair notices to save such buildings. In the recent past, even Grade I listed buildings (i.e. Gwrych Castle) have been lost due to Local Authorities not implementing their powers fully.

The County Councils are in 'pole position' regarding the administration of heritage legislation through the planning system. It is important that they implement new regulation uniformly across Wales. They exist in a difficult financial climate, which makes it impossible for them to perform at the best of their abilities. Austerity measures within County Councils have led to many skilled personnel to leave the public sector. Over the last few years, there has been a noticeable drop (over 35%) in the number of qualified Conservation Officers within the Local Authorities in Wales. Some Local Authorities have seen their conservation departments shrink by two thirds. We are concerned that the administrative responsibility by this legislation would fall upon the County Councils, who may not have the capacity to employ suitably qualified staff. The result could be simply to degrade the whole issue of heritage regulation. The Bill does not deal with the fundamental issue of resources. There is a strong probability that the new legislation is not properly administered, or that they are used by unqualified individuals who will have significant added powers at their disposal. Our concern is that listed buildings will become tainted, unattractive and unsalable if the new regulations are not implemented uniformly across Wales.

The recommendations of the Williams Commission will also have an effect on the implementation of any legislation arising from this Bill. The County Councils will be in a state of transition, the Bill does not address this important issue. In any case, placing significant additional levels of work on County Councils without having audited their past performances, and thus their abilities to take on new work could well result in the new regulations simply not being effective, and at worse causing endless hardship to members of the community when regulations are miss-applied.

Given the lack of available resources, the emphasis must not be on compulsion, but on the enthusiastic use of guidance notes. Detailed guidance notes across a range of issues should be issued in order to help preserve our historic environment.

There is no national policy for Buildings at risk in Wales, despite around 3500 currently being at risk. No action is being taken, especially in regards to the owners that are deliberately neglecting their buildings, and refusing to put them on the open market. Appropriate regulations need to be in place to address this important issue. One potential solution would be to bring such building back into rating. The Local Councils could enforce these charges in order to encourage the owners to take appropriate action; i.e. to sell or to repair.

Specific comments arising from the Bill:

p5- 1AD Compensation for loss or damage caused by interim protection

(1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).

(2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.

(3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

Sites of archaeological remains should be clearly marked on site. All sites should be marked similarly to that of public footpaths, in order to clearly identify the location of archaeological sites. Maps should be circulated with County Councils, Land Registry, NFU, Libraries, as well as with the amenity societies.

p6 – 1AE Review of decisions on certain amendments relating to the Schedule

(4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.

This subsection appears to put the Welsh Ministers above the law. The validity of any decisions should be open to legal proceedings.

p15 - 9ZF Scheduled monument enforcement notice: power of entry

(1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes—

- (a) ascertaining whether a scheduled monument enforcement notice should be served;
- (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b); *Historic Environment (Wales) Bill*
- (c) ascertaining whether a scheduled monument enforcement notice has been complied with.

Entry to any land must follow written notice.

p16- 9ZF Scheduled monument enforcement notice: power of entry

(2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—

- (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
- (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.

Under section (b), the general public pay taxes for officials to undertake such actions. It would be over zealous for the owner to pay any recovery costs in this instance.

p18 - 9ZJ Temporary stop notice: power of entry

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes—

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display or removal of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b)
- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

Entry to any land must follow written notice.

p19 - 9ZK Temporary stop notice: offence

(5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

Under this subsection, indication of level of fine is needed. Will the courts decide? There should be a stated maximum.

p23 – 41A Register of historic parks and gardens

(2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of grounds of a description referred to in subsection (1)—

- (a) any building or water on, or adjacent or contiguous to, those grounds, or
- (b) any land adjacent or contiguous to those grounds.

The above section is not specific enough. More information is needed in order to avoid doubt.

p39 - 44C Temporary stop notices: offence

(5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

Under this subsection, indication of level of fine is needed. Will the courts decide? There should be a stated maximum.

p40 - 44D Temporary stop notices: compensation

(4) In section 88 of that Act (rights of entry), after subsection (3) insert—

“(3A) Any person duly authorised in writing by a local planning authority in Wales may at any reasonable time enter any land for any of the following purposes—

- (a) securing the display or removal of a temporary stop notice (see section 44B);
- (b) ascertaining whether a temporary stop notice is being complied with;
- (c) considering any claim for compensation under section 44D.”

Entry to any land must follow written notice.

p41 - 30 Urgent works: extension of scope and recovery of costs

(6) In section 55 of that Act (recovery of expenses), after subsection (5) insert—

“(5A) Where the Welsh Ministers make a determination under subsection (4), the owner of the building or (if it is given notice under subsection (5)) the local authority may, within 28 days of the service of the notice under subsection (5), appeal to the county court against the decision.

There is a concern that the 28 days window in which to appeal any determinations will be inadequate. A time period of 60 days would be sufficient. The owner may be away on holiday or working abroad and would be unable to challenge any costs recoverable for urgent works.

(5B) In the case of a building in Wales, as from the time when the notice under subsection (2) becomes operative, the expenses which an authority may recover under this section carry interest at such rate as the authority may fix until recovery of all sums due under this section; and the expenses and any interest are recoverable by the authority as a debt.

The authorities will have the power to levy interest. This should not be over burdensome; it should be based on the base rate at the time.

p45 - 37 Establishment of Panel and work programme

(1) The Welsh Ministers must establish a panel of persons, to be known as the Advisory Panel for the Welsh Historic Environment (“the Panel”).

(2) The purpose of the Panel is to provide the Welsh Ministers with advice on matters relating to the formulation, development and implementation of policy and strategy in relation to the historic environment in Wales; and for this purpose “Wales” has the same meaning as in the Government of Wales Act 2006 (c.32) (see section 158(1) of that Act).

Having set up the Advisory Panel for the Welsh Historic Environment, the Welsh Ministers should have a duty to take up the panel’s recommendations, other than for compelling reasons in exceptional cases. Private owners and amenity societies must be represented.

Under Section 28- The Georgian Group welcomes the proposed Heritage Partnership Agreements. In reality, the Local Authorities may not willingly join into any partnership, particularly if the building/buildings are in divided ownership. The wording states ‘may’ enter into such an agreement rather than ‘will’. We are concerned that the Local Authorities, due to the potential extra workload, will decline to enter such agreements.

Creation of a statutory register for historic parks and gardens - The non-statutory register currently includes 386 parks and gardens of special historic interest. The new statutory status of the register will not be accompanied by additional legal restrictions on historic parks and gardens or the introduction of a new consent regime. However, the intention is to amend regulations to direct LPAs to consult with Cadw on all planning applications affecting grade I and II* sites and with a nominated amenity society on all planning applications affecting registered parks and gardens. We are concerned that the new register will simply be too burdensome to the Local Authorities and to private individuals. What is the definition of works? Will there be consequences if an individual plants the incorrect species of plant? Additional legal restrictions should be limited to significant earth moving, any minor changes should not be subjected to over regulation.