

## 1. Summary

1.1 Welsh Government rightly recognises that the historic environment *‘is a finite and non-renewable resource and a vital and integral part of the historical and cultural identity of Wales’* which contributes *‘to economic vitality and culture, civic pride, local distinctiveness and the quality of Welsh life’*<sup>1</sup>.

1.2 Against that background, the Historic Environment (Wales) Act 2016 is a welcome piece of legislation strengthening the mechanisms for the management and protection of historic assets in Wales. While there are other reforms which could further support and promote the historic environment, this provides a generally sound basis for its ongoing management.

1.3 However, heritage legislation does not operate in isolation. In particular, its operation is closely interlinked with the planning system and changes to the planning regime together with constrained resources threaten seriously to undermine the improved framework for management and protection of the historic environment.

## 2. Introduction

2.1 The Chartered Institute for Archaeologists (CIfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

2.2 CIfA has over 3,400 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

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<sup>1</sup> Paragraph 6.2.1 of Planning Policy Wales, Edition 9, November 2016

2.3 ClfA's Wales / Cymru Group has over 300 members practising in the public, private and voluntary sector in Wales.

### 3. General

3.1 ClfA strongly supports the work of Cadw and of the Welsh Archaeological Trusts (all of which Trusts are members of ClfA's Registered Organisations scheme, a quality assurance scheme providing a 'kite mark' of commitment to professional standards and competence in the historic environment<sup>2</sup>). These bodies provide a sound organisational basis for the management and protection of historic assets with archaeological interest.

3.2 Furthermore, the Historic Environment (Wales) Act 2016 ('the Act') strengthens the mechanisms available to manage and protect the historic environment in Wales. We particularly welcome the introduction of a statutory duty on Welsh Ministers to compile and keep up to date a historic environment record for each local authority area in Wales but there are a number of other constructive reforms including

- an extended and more holistic definition of a 'scheduled monument'
- interim protection for assets proposed to be scheduled or listed
- modification of the defence of ignorance in respect of offences relating to scheduled monuments
- further enforcement provisions with respect to enforcement notices, stop notices and injunctions in relation to scheduled monuments.

### 4. Further Reforms

4.1 A significant issue which was not addressed in the Act is widespread damage to archaeological remains through ploughing<sup>3</sup> and other agricultural activity permitted on scheduled monuments through the operation of class consents under the Ancient Monuments and Archaeological Areas Act 1979. Reform of the class consents regime should address this. There may be some compensation implications but it is not expected that these would be unduly onerous. Such

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<sup>2</sup> <http://www.archaeologists.net/regulation/organisations>

<sup>3</sup> See 'Saving Sites from the Plough' for consideration of a continuing UK-wide problem: [http://www.archaeologists.net/sites/default/files/ifa\\_yearbook04\\_plough.pdf](http://www.archaeologists.net/sites/default/files/ifa_yearbook04_plough.pdf)

expenditure would be a wholly justifiable price for the significant additional protection of historic assets that would be achieved.

4.2 The Act does not seek fundamentally to alter the pre-existing system of designation and protection of the historic environment. Given current threats to the historic environment (elaborated in section 5 below) a more radical re-appraisal of designation mechanisms may be necessary. This should include consideration of

- greater integration of mechanisms to protect the natural and the historic environment. For instance, historic marine protected areas (as introduced in Scotland by section 73 of the Marine (Scotland) Act 2011) would potentially provide a more flexible means than scheduling at sea constructively to manage marine heritage assets
- modification of existing designations (such as areas of archaeological importance under Part II of the 1979 Act and conservation areas) better to recognise and safeguard archaeological interest
- greater use of sites of archaeological interest (as defined in the Town and Country Planning (General Permitted Development) Order) in order to avoid harm to historic assets with archaeological interest through the exercise of permitted development rights.

4.3 In addition (and notwithstanding the recent publication of a revised Chapter 6 of Planning Policy Wales and a new TAN 24 on the Historic Environment), further policy changes which would facilitate the efficient management and protection of the historic environment include

- promoting the use of a more nuanced planning condition than that which appears as model condition 24 in Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management. The condition proposed by the Institute in its response<sup>4</sup> to consultation on a draft of the Circular provides a more effective means not only to secure public benefit by offsetting harm to the significance of historic assets, but also to facilitate the prompt delivery of sustainable development

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[http://www.archaeologists.net/sites/default/files/IfA\\_response\\_to\\_consultation\\_on\\_the\\_use\\_of\\_planning\\_conditions\\_for\\_development\\_management.pdf](http://www.archaeologists.net/sites/default/files/IfA_response_to_consultation_on_the_use_of_planning_conditions_for_development_management.pdf)

- development in planning policy of the concept of ‘archaeological interest’ as embracing historic assets which hold, or potentially may hold, evidence of past human activity worthy of expert investigation at some point. This would help to make clear the need to consider not just known assets but also the archaeological potential of sites.

4.4 Consideration should also be given to how Welsh Government can maximise the delivery of public benefit from the historic environment<sup>5</sup>. This should include more effectively promoting the uniform application of professional standards<sup>6</sup> in work relating to the historic environment along with recognition of the need for accredited practitioners in this regard<sup>7</sup>. ClfA would be happy to work with Welsh Government and other professional bodies to this end.

## 5. Threats

5.1 Scheduling under the 1979 Act is a discretionary process. Traditionally historic assets with archaeological interest have been managed by selective scheduling accompanied by flexible management through the planning system which allowed the impact of development upon undesignated assets to be considered and addressed. However, this model is currently under threat from ongoing planning reform combined with a chronic lack of resources in the wake of a crippling recession.

5.2 The emphasis in planning reform is on streamlining and deregulation which in many cases (for instance, the widespread extension of permitted development rights) removes the safeguards which the requirement for a planning application provides for the historic environment. Without an application there is no mechanism to require pre-determination archaeological desk-based assessment and field evaluation or to impose enforceable planning conditions to ensure the

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<sup>5</sup> In a planning context the Institute produced a report in 2011 on Realising the Benefits of Planning –Led Investigation in the Historic Environment: A Framework for Delivery (<http://www.archaeologists.net/sites/default/files/SouthportreportA4.pdf>). Although this report focused on England much of its content could be applied equally to Wales.

<sup>6</sup> In archaeology these are formulated and enforced by ClfA: <http://www.archaeologists.net/codes/cifa>

<sup>7</sup> In archaeology personal accreditation is provided through professional membership of ClfA (<http://www.archaeologists.net/regulation/accreditation>) and organisational accreditation is provided through ClfA’s Registered Organisations scheme (<http://www.archaeologists.net/regulation/organisations>).

delivery of public benefit. If we are not to risk losing historic assets (including assets of national importance) or harming their significance Government must ensure either

- that planning reforms contain adequate safeguards for the historic environment (something which has not thus far occurred, for instance, with the extension of permitted development rights) or
- that a new approach is adopted to designation so as to provide the protection formerly provided to undesignated assets through the planning system.

5.3 The risk to the historic environment is significantly increased in the light of the budgetary constraints to which local authorities and the Welsh Archaeological Trusts are subject. No matter how good the mechanisms for managing and protecting the historic environment are, if there are insufficient funds properly to administer the system it will fail.

5.4 Thus, for example, the provisions in the Act for Historic Environment Records (HERs) to be compiled, maintained and supported with appropriate expertise are the envy of the sector outside Wales, but without the commitment of funds on a long term basis to maintain and support those facilities they will be vulnerable. A HER is a dynamic tool which needs regular updating and expert support if it is to provide the benefits intended.

5.5 Similarly, the management and protection of historic assets through the planning system relies on appropriate archaeological and related expertise being available to local planning authorities in all cases. An IHBC staffing survey in 2012<sup>8</sup> showed reductions in archaeological and other related posts in Wales and any downward trend must be halted and, if possible, reversed.

5.6 These concerns are also magnified by the United Kingdom's decision to withdraw from the European Union. Amongst the implications for the historic environment in Wales are

- the vulnerability of environmental regulation (particularly that relating to environmental impact assessment) in the absence of EU Directives

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<sup>8</sup> <http://www.ihbc.org.uk/news/docs/IHBC%20Quantifying%20staffing%20in%20Wales%202012.pdf>

- potential barriers to the free movement of skilled archaeological labour both into and out of the United Kingdom
- potential loss of funding and support for rural archaeology through withdrawal from the Common Agricultural Policy (CAP)
- potential loss of other European funding (for instance in education and research).

5.7 Brexit is a topic in itself, but these issues will have to be taken into account and addressed in any appraisal of the opportunities and threats facing the historic environment in Wales.

## 6. Conclusion

6.1 There is much to celebrate in the Welsh historic environment. However, if the threats facing the sector in Wales are not addressed, we may squander the opportunities provided by a forward-thinking and constructive Historic Environment Act.