

REPORT OF THE CULTURE AND HERITAGE MANAGER

**SUBJECT:
PROPOSED AMENDMENTS TO THE DRAFT HERITAGE BILL**

This report updates Members on proposals to amend the Ancient Monuments and Archaeological Areas Act 1979 and seeks authorisation for the Authority to respond to a Welsh Government consultation seeking views on these proposals.

Introduction

Heritage Crime is a term used to describe the deliberate or accidental damage to the archaeological and historic sites and monuments which form our rich culture and heritage. It is both finite and irreplaceable.

Unfortunately Heritage Crime is on the increase. One notable example is the recent damage to the Bedd Morris Bronze Age standing stone, an important cultural icon even today to the people of Newport and its surrounding communities. Another is the damage caused to the Medieval Pilgrims' Cross at Nevern.

Both are scheduled ancient monuments protected by the Ancient Monuments and Archaeological Areas Act 1979.

Between 2006 and 2012, Cadw received reports of 119 cases of unlawful damage to scheduled ancient monuments in Wales. However, there has been only one successful prosecution under the Act in the last 25 years. Cadw remains responsible for reporting cases of damage to scheduled ancient monuments to the Police and the Crown Prosecution Service.

Consultation

A number of respondents to last year's consultation document, 'The future of our past',¹ expressed concerns about the rarity of successful prosecutions. Calls were made for changes to some of the defences allowed by the Act that enable defendants to claim ignorance of the status or location of a monument. Changes that would make it easier to secure convictions for illegal damage.

Accordingly, the Welsh Government has invited views on a proposal to amend the Act to modify the 'ignorance defence'. Since responses are only being sought on a single proposal, the consultation period will be limited to six weeks running from the 3rd March to the 14th of April 2014.

The consultation results will be available while there is still time to shape the provisions of the Heritage Bill, which is scheduled for introduction to the National Assembly for Wales in spring 2015.

Proposed amendments

The proposed amendments to the Ancient Monuments and Archaeological Areas Act 1979 are sections 2, 28 and 42 relating to criminal offences and the defences used during prosecutions.

They refer to controlling works on scheduled monuments, damaging or destroying them and to the unauthorised use of metal detectors on them. The Act allows a person who commits any or all of the above to use ignorance as a defence. For example a person found unlawfully using a metal detector on a scheduled ancient monument such as a Bronze Age barrow could deny any knowledge that the site was scheduled and could point out there was no sign to say it was protected. The present legislation might well allow such a defence to stand.

The proposal²

The proposal is to amend those sections of the Act where the accused ought to have known that sites or monuments were protected and that defences may only be available where the accused had taken all reasonable steps to check whether planned actions would affect a protected site or monument.

With greater information on scheduled sites and monuments publically available today in a wide range of media such as 'Archwilio'³, there should be fewer opportunities to use ignorance as a defence against prosecution. It will, however, be vital to ensure that the information is easy to source.

The recent consultation document, '*The future of our past*', proposed that the Welsh Government should maintain a publicly accessible, map-based, online record on which all nationally designated and registered historic assets would be depicted and described. This would give landowners and the general public a clear, easily available and free means to obtain authoritative descriptions and view maps showing the location and extent of scheduled ancient monuments and other historic assets.

The present, six week consultation running from March 3rd to April 14th asks a single question:

"Do you agree with the proposed amendments to the criminal offences and defences in sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979?"

Officer Appraisal

The outcome sought from the proposed amendments of the Act is to make it more robust and effective in protecting scheduled sites and monuments. The proposal will not entail any changes to the existing practice for prosecutions. It will not entail any

additional resource implications for this Authority providing that the Historic Environment Record is not used as the basis for prosecution evidence. Cadw would continue to be responsible for referring cases of damage to scheduled ancient monuments to the police and the Crown Prosecution Service.

Recommendation: Members are requested to APPROVE the proposal and for the Culture and Heritage Manager to respond to the consultation accordingly.

1. 'The future of our past'

<http://wales.gov.uk/splash?orig=/consultations/cultureandsport/heritage-bill/>

2. Heritage Bill E-bulletin

http://cadw.wales.gov.uk/docs/cadw/publications/Heritage_Bill_Ebulletin_7_EN.pdf

3. Archwilio

https://play.google.com/store/apps/details?id=mobi.cemas.archwilio&hl=en_GB

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(For further information contact Phil Bennett – Culture and Heritage Manager on ext. 4830)