Consultation Response

Welsh Government Consultation

Heritage partnership agreements: regulations and guidance

Response from CLA Cymru

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Introduction for CLA members (not included in the CLA online response)

This is a Welsh Government consultation on regulations and guidance on new statutory Heritage Partnership Agreements (HPAs), which will become possible when the regulations are made (under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Historic Environment (Wales) Act 2016).

HPAs are voluntary agreements between owners and the local planning authority and/or Cadw (and sometimes other parties), which can allow the parties to agree on what is of heritage importance and what is not, or to agree specific management regimes; they can also grant listed building consent (LBC) and/or scheduled monument consent (SMC) instead of the usual LBC/SMC procedures. They can remain in place for a number of years (see below). They exist in England (for listed buildings only), but are little used in practice.

Consultation questions

Q1: The draft guidance, Heritage partnership agreements in Wales, is intended to help owners and consenting authorities to set up and manage heritage partnership agreements. The main guidance relating to setting up an agreement appears in section 3. Is there sufficient detail here to support the creation of a heritage partnership agreement?

~~Yes~~ No

If not, how could it be improved?

The CLA's c3,000 members in Wales manage roughly half of rural Wales and thus between a quarter and half of Welsh heritage, including large numbers of listed buildings and scheduled monuments, and make many listed building consent (LBC) applications and a significant number of scheduled monument consent (SMC) applications each year.

In general, this draft guidance is sensible and provides enough detail, but we have a number of specific comments as follows:

<u>Works</u>

There is an implication in some (but not all) parts of the text that Heritage Partnership Agreements (HPAs) will always include works, and that their purpose is to grant consent for those works. Some HPAs (insofar that they are used at all; see Question C below) may include works, but as the guidance says one of the more helpful potential purposes of HPAs can be to give clarity and certainty by listing types of works which do <u>not</u> need consent (for example because they do not affect the special interest of a listed building), or areas of a landholding which are not covered by listing or scheduling and on which LBC or SMC would therefore not be required. **It should be made clearer therefore throughout the guidance that a HPA may or may not include specific works**, by saying this expressly, and by using phrases like "…works (if applicable)…" in the text where appropriate.

<u>Duration</u>

The Regulations do not limit the duration of a HPA, but the guidance (pages 4 and 11) strongly implies that they should be limited to "10-15 years". That makes it highly unlikely in practice that local planning authorities (LPAs) will agree durations longer than 15 years, or indeed even 10 years, even where that would clearly be appropriate.

It is of course true (as the guidance says) that perceptions of special interest/national importance may change over time, so that something now seen as non-significant might be

seen as more important, or vice versa; or other factors may change, so HPAs of more than say 20-25 years might be undesirable.

However, the work required to enter into an HPA will be significant, and thus expensive, and the owner will have to meet most of that cost, so owners are unlikely to be willing to enter into HPAs if the cost had to be written off over a relatively short period. Moreover, if works are involved, some works programmes will continue for over 15 years, and works are frequently delayed for funding or other reasons.

These factors suggest the need for a maximum duration of 20-25 years: a short maximum duration could make this project largely pointless.

There was some debate on this in England. Following that debate, no legal limit was set, and the published Historic England guidance says:

> "A period of up to 25 years would be a sufficiently long term to enable strategic planning for the building(s) and to justify the input of resource needed to set up the Agreement, and probably represents the maximum time span within which the Agreement would not risk falling out of step with changing conservation requirements or the needs of the building itself. Parties to the Agreement may of course choose to identify a shorter or longer lifespan for the Agreement, depending on the characteristics and needs of the building(s)..."
> (see https://historicengland.org.uk/images-books/publications/setting-up-listed-building-hpa-advice-note-5/heag008-listed-building-hpa-an5/, page 5).

The CLA certainly does not suggest that Wales should always copy England (which would carry significant dangers for heritage in some cases), but in this case the HE advice on duration does seem a sensible model to follow. **If the maximum duration in the guidance remained at "10-15 years", we would expect the use of HPAs to be very low**.

The actual duration will always be within the control of the LPA and/or Cadw, and other participants or consultees (but in practice, of course, if the LPA or Cadw sets a duration which is too short, the HPA will simply not happen).

The guidance therefore ought to suggest a maximum of "20-25 years". It could suggest factors which might influence duration: for example, if the purpose of the HPA is purely to allow a programme of one-off works, the duration might perhaps be the expected duration of works plus a significant allowance for delay; but where the HPA is to allow recurrent work, or to set out agreement on what is significant and requires LBC and what does not, a much longer duration will be appropriate.

Complexity, red tape, and positivity

As noted under Question C below, we think some (or many) LPAs will be reluctant to enter into HPAs, or resist them, and may use a number of ways of discouraging them, including (as above) insisting, if the applicant is not proposing works, that an HPA must contain specified works; or insisting on too short a duration for an HPA to be viable.

LPAs might also seek to make the process more complex, so **we would strongly suggest adding another element from the HE guidance, which says "In all cases… care should be taken to avoid introducing requirements which undermine the process efficiencies the Agreement is designed to achieve**" (page 5).

Finally, it would also be helpful to stress the need for positivity. The HE guidance for **example says: "It will be preferable to draft the [HPA] as a positive statement primarily setting out categories of works which are permitted rather than those which are excluded. This would be clearer, easier to observe, and more in keeping with the cooperative philosophy of [HPAs]**. It would also avoid any implication that anything not on the list of exclusions was permissible."

Q2: The consultation and publicity arrangements for heritage partnership agreements are set out in:

- *regulations 5 to 7 and 9 of the draft Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021*
- *regulations 4 to 5 of the draft Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021*
- *section 4 of the draft guidance, heritage partnership agreements in Wales*

Are these arrangements clear and workable?

Yes ~~No~~

If not, how can they be improved?

These procedures appear to be sensible.

Q3: It is intended that minor alterations to heritage partnership agreements will not trigger the publicity and consultation requirements specified in:

- *regulation 5 of the draft Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021*
- *regulation 4 of the draft Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021*

The draft guidance, Heritage partnership agreements in Wales, expands on these requirements in paragraph 3.10. Can you provide examples of changes that you believe heritage partnership agreements should be able to accommodate without requiring full publicity and consultation?

Examples should obviously include changes that do not give rise to a requirement for LBC or SMC, in which case clearly there should be no need for consultation. Otherwise, this should broadly reflect the LBC/SMC regimes; essentially-minor changes to works/conditions/ timescales which would not require further consultation in the LBC/SMC process should not require consultation where there is a HPA.

Q4: Section 7 of the draft guidance, heritage partnership agreements in Wales, provides a template for a heritage partnership agreement. Do you think this template will be helpful?

Yes ~~No~~

If not, how could it be improved?

Yes it will, and indeed we think a template is essential, so that all users can see the ingredients which HPAs will usually need. It should also minimise the opportunity for LPAs

to argue for disproportionate or unnecessary content, or conversely for owners to argue that important components are not necessary.

Q5: The regulatory impact assessment in annex D analyses the costs and benefits of the proposed heritage partnership agreement regulations. Do you have other information or evidence that would be useful to add to this assessment?

No, but we do have a few more general comments on these impact assessments:

(i) The impacts of HPAs will inevitably be low because they do not really address the problems in the heritage consent system, relatively few owners will take them up, and LPAs will probably resist them, so there will probably be relatively few HPAs in practice.

(ii) We commend the principle of impact assessments, and the work which has been done on these specific assessments.

(iii) However, the requirement to have more than 40 pages of impact assessments for a proposal of this nature appears disproportionate.

(iv) We also think the impact assessments significantly understate the costs of the existing system, which has a variety of costs to the LPA, the owner, and to the economy which are understated or not taken into account.

Q6: The draft integrated impact assessment in annex E considers the impact of the proposed heritage partnership agreement regulations in a number of spheres. Do you have other information or evidence that would be useful to add to this assessment?

No. See the answers to the previous question.

Question A: We are under a duty to consider the effects of our policy decisions on the Welsh language, under the requirements of the Welsh Language (Wales) Measure 2011. We would like to know your views on the effects that the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All regulations and guidance should of course be available in Welsh and English. The Welsh language should be used in a positive way: where there is value to be added or there is a desire from the owner to use the Welsh language, its use should be encouraged and supported, but people who do not wish to do this should not be treated negatively.

Question B: Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See Question A.

Question C: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

While we welcome statutory HPAs in principle, the costs of entering into them will be high; they obviously do not add a great deal of value where owners simply want to make one-off changes, the great majority of listed building consent applications; and they do not of course remove the requirement for planning permission (where applicable). They are therefore unlikely to streamline the system to any great extent.

They may have some benefit for significant property holdings, especially those which already have formal asset plans in place (so much of the cost has already been incurred), and/or where the owner routinely wants to make minor changes and there is uncertainty about the need for consent; in these cases a HPA could allow owners and local authorities to agree what is significant and what is not, allowing work which does not affect significance to go ahead without consent. HPAs may also be helpful for big programmes of phased works extending well beyond the normal 3-year time limit on consents. However, these situations cover only a minority of cases and heritage. From experience in England, moreover, it is likely that some or many LPAs will resist HPAs, partly for resource reasons, and partly because they feel that entering into an HPA fetters their ability to change their minds subsequently.

In England there are only a very small number of HPAs, and most or all of those were financially supported by Historic England and/or followed pilot projects which were financially supported by Historic England.

We therefore think there will be only a limited number of HPAs. HPAs are certainly not (as has sometimes been implied by Historic England) a magic solution to the longstanding resourcing and other problems in the heritage consent system.