

Explanatory Memorandum to the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021 and the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by Cadw, the Welsh Government's historic environment division, and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021 and the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Dawn Bowden MS

Deputy Minister for Arts and Sport and Chief Whip

28 September 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

These Regulations make provision for the setting up of heritage partnership agreements for listed buildings and scheduled monuments in Wales. These voluntary agreements may be between the owner of a listed building and either the local planning authority or the Welsh Ministers (in practice, Cadw, the Welsh Government's historic environment service), or between the owner of a scheduled monument and the Welsh Ministers. In either case, there may also be additional parties to a heritage partnership agreement with special knowledge, or interest in, the listed building or scheduled monument.

The Regulations provide details about:

- the terms that must be included in a heritage partnership agreement
- the consultation and publicity requirements on draft heritage partnership agreements and draft variations
- the procedures that a local authority or the Welsh Ministers (in the case of an agreement relating to a listed building), or the Welsh Ministers (in the case of an agreement relating to a scheduled monument), must follow must follow to terminate an agreement by order.

The Regulations also apply, disapply and reproduce certain sections of the Ancient Monuments and Archaeological Areas Act 1979 ("1979 Act") and Planning (Listed Buildings and Conservation Areas) Act 1990 ("1990 Act"), as appropriate, for the purposes of heritage partnership agreements.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Section 9ZB(3) and (7) of the 1979 Act and section 26M(3), (4) and (5) and 93(6A) of the 1990 Act give the Welsh Ministers the power to make regulations in relation to heritage partnership agreements.

The Acts require the Welsh Ministers to make regulations on the following:

- i. the consultation that must take place before a heritage partnership agreement is made or varied;
- ii. the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
- iii. specifying terms that must be included in a heritage partnership agreement; and
- iv. enabling local authorities (where appropriate) or the Welsh Ministers (in the case of an agreement relating to a listed building), or the Welsh Ministers (in the case of an agreement relating to a scheduled

monument), to terminate by order a heritage partnership agreement or any provision of such an agreement.

The Acts also provide for regulations to apply, disapply or reproduce certain sections of the 1979 and 1990 Acts for the purposes of heritage partnership agreements.

These Regulations are subject to the Senedd's affirmative procedure.

4. Purpose and intended effect of the legislation

The Historic Environment (Wales) Act 2016 amended both the 1979 Act and the 1990 Act to introduce heritage partnership agreements. Sections 9ZA and 9ZB of the 1979 Act and sections 26L and 26M of the 1990 Act set out the legislative framework for heritage partnership agreements, with the Regulations setting out some of the procedural requirements.

A heritage partnership agreement is a voluntary arrangement for the long-term management of one or more designated historic assets. It is negotiated between the owner of the asset(s), the relevant consenting authority or authorities and any other interested parties. It can incorporate listed building or scheduled monument consents, as the case may be, for an agreed programme of works to be carried out during the lifetime of the heritage partnership agreement, which may last for as long as 10 to 15 years. It can also specify what does and does not require consent in the context of an overall conservation management plan. In addition, the agreement may also cover maintenance, and, where appropriate, arrangements associated with public access.

A heritage partnership agreement supports the beneficial, long-term management of historic assets by setting out agreed conservation objectives, identifying the actions needed to meet them in a planned programme of works and providing the necessary consents. A heritage partnership agreement provides the basis for a comprehensive and consistent approach to the management of scheduled monuments and listed buildings, whether located together on a single estate or scattered across one or more local authority areas.

Section 9ZB(3) of the 1979 Act and 26M(3) of the 1990 Act require the Welsh Ministers to make regulations to make further provision about certain aspects of the content of heritage partnership agreements including the procedures for publicising and consulting on and for terminating, agreements.

Matters that must be included in a heritage partnership agreement

There is no application process for a heritage partnership agreement since it is a negotiated partnership. The Regulations supplement the requirements in the 1979 Act and 1990 Act about what a heritage partnership agreement may contain. The Regulations require heritage partnership agreements to include in particular enough information to identify the historic asset and the duration of the agreement.

Guidance has been developed which includes detailed advice on how to develop an agreement, including a template for such agreements.¹

Consultation and publicity requirements

It is expected that most heritage partnership agreements will last for a decade or more. The Regulations set out specific consultation and publicity arrangements. The aim is to strike a reasonable balance between providing adequate accountability and transparency for these far-reaching agreements and retaining sufficient flexibility to accommodate the diversity of assets and circumstances that may be encompassed within them.

The consultation requirements in the Regulations are derived from existing mechanisms for listed building and scheduled monument consents.

Listed building heritage partnership agreements

Once the parties to a heritage partnership agreement have negotiated a draft agreement or a variation, a formal consultation must be undertaken by the local planning authorities involved. The draft agreement or variation must be sent to the Welsh Minsters who must be given at least 21 days for consideration of the documents and the return of representations.

The local planning authority must also give notice to long-term occupiers and owners who are not party to the agreement and to anyone else that may appear to have special knowledge of, or interest in, the particular buildings involved, or in buildings of architectural or historic interest more generally. A notice must be placed on its website and displayed on or relatively near the listed building or buildings. A draft of the agreement or variation must be available for public inspection. The local planning authority must provide at least 21 days for any representations on the draft agreement to be made.

Scheduled monument heritage partnership agreements

Since Cadw is the consenting authority for works affecting scheduled monuments, it is also responsible for the consultation and publicity that must precede the making of a scheduled monument heritage partnership agreement, or before varying the duration of an agreement or applying the agreement to additional monuments. Cadw must consult the owner, any occupier, any local authority or national park authority in whose area the scheduled monument or land is located, and any local authority or national park authority that is a guardian of the scheduled monument or land. Cadw must send each of them a complete copy of the draft document and allow at least 21 days for them to make representations.

In addition Cadw must publish a notice on its website for at least 21 days and give the notice to anyone who is not party to the agreement who may have an interest in the draft agreement or variation. This may include the Royal Commission on the Ancient and Historical Monuments of Wales, the Welsh archaeological trusts and the national amenity societies. Again they must be given at least 21 days to make representations.

¹ Heritage Partnership Agreements in Wales will be published on the Cadw website

Requirement to publish a list of heritage partnership agreements

The Regulations require a list of current listed building heritage partnership agreements (including any variations) to be published on a local planning authority website. Similarly, Cadw must publish a list of scheduled monument heritage partnership agreements on its website.

Termination of a heritage partnership agreement by Order

A heritage partnership agreement may be terminated:

- due to a change in ownership
- under the terms of the agreement
- by order of a local planning authority or the Welsh Ministers.

The Regulations set out the procedure to follow if the local planning authority or the Welsh Ministers find it necessary to terminate the heritage partnership agreement by Order. It is envisaged that termination by order will only happen in exceptional circumstances, outside those specified in the heritage partnership agreement and its arrangements for termination. Such a situation may arise, for example, where significant discoveries are made following excavation, necessitating the withdrawal of consent or cessation of works against the wishes of the owner.

A listed building heritage partnership agreement, or a part thereof, may be terminated by order either by a local planning authority that is party to the agreement or by the Welsh Ministers. Sections 23, 24 and 26 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which deal with the revocation and modification of listed building consent by order, have provided the framework for the process.

Only the Welsh Ministers may terminate a scheduled monument heritage partnership agreement, or any part of an agreement, by order. The process is derived from the provisions in the Ancient Monuments and Archaeological Areas Act 1979 for revoking scheduled monument consent by direction.

A person with an interest in a building affected by a termination order made by a local planning authority or the Welsh Ministers may be able to claim compensation if the order renders works abortive or otherwise causes loss or damage.

5. Consultation

A twelve-week consultation ran from 18 January 2021 to 12 April 2021 on the draft Regulations.² Guidance has also been prepared for heritage partnership agreements which sets out how to prepare the agreements. It explains the statutory requirements of an agreement as well as expanding on this to include areas that are good practice to implement. It provides advice on the roles and

² Heritage Partnership Agreements, Consultation Summary of Responses: [Heritage partnership agreements: regulations and guidance | GOV.WALES](#)

responsibilities of those involved. This guidance was also part of the consultation which was drawn to the attention of a wide audience of key stakeholders including local planning authorities, historic environment interest and voluntary groups, and other related professional and government bodies.

Twenty-two responses were received and were broadly positive about the introduction of heritage partnership agreement regulations and the associated guidance. Some amendments have since been made to the Regulations to:

- allow greater flexibility about the duration of agreements
- reduce the administrative burden to local authorities when notifying owners and occupiers that are not party to an agreement
- clarify the role of the Upper Tribunal in compensation claims on termination.

Drafting changes have also been made. The guidance has been amended to clarify the content of a heritage partnership agreement and related processes where respondents have identified gaps in the information or requested that it be expanded.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act') and the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act') provide the fundamental statutory framework for the designation, protection and management of scheduled monuments and listed buildings in Wales. Under the provisions of those Acts, authorised works to designated historic assets are regulated by written consents obtained from the Welsh Ministers or local planning authorities. The consents specify the permitted works and may be subject to particular conditions.

The Historic Environment (Wales) Act 2016 amended both the 1979 Act and the 1990 Act to introduce provisions for the making of heritage partnership agreements.

Heritage partnership agreements are voluntary agreements for the medium- to long-term management of one or more designated historic assets. These statutory agreements will be able to incorporate scheduled monument and listed building consents, authorising works that have been identified and agreed by the parties to the agreement. Such consents will be particularly useful for routine works required for the conservation and management of multiple historic assets that would otherwise have necessitated successive and largely repetitive applications. Heritage partnership agreements will also encourage more consistent and coherent management of monuments and buildings.

In order to be effective, the agreements will need to be flexible so they can accommodate not only different types of sites and conservation requirements, but also different configurations of ownership, management and wider

community involvement. In appropriate circumstances, heritage partnership agreements will deliver benefits to both owners and consenting authorities, but they will offer little or no advantage to most owners of scheduled monuments and listed buildings who only occasionally undertake works that require consent. Consequently, it is unlikely that there will be more than ten heritage partnership agreements made in Wales in any single year.³

The enabling legislation in the 2016 Act sets out a framework for making HPAs. It also requires that regulations must be made for:

- the consultation that must take place before an HPA is made or varied;
- the publicity that must be given before or after an HPA is made or varied;
- the terms that must be included in an HPA; and
- the termination of an HPA by order by the Welsh Ministers or a local planning authority.

Four options have been considered whilst developing the proposals for the regulations.

- Option 1 — Do nothing and continue with existing consent regimes without making regulations.
- Option 2 — Make regulations that give local planning authorities and the Welsh Ministers maximum flexibility when determining the consultation and publicity, terms and termination procedures required for a heritage partnership agreement.
- Option 3 — Make regulations that place prescriptive requirements on local planning authorities and the Welsh Ministers for the consultation and publicity, terms and termination procedures required for a heritage partnership agreement.
- Option 4 — Combine elements of options 2 and 3 to make regulations that establish minimum requirements for consultation and publicity, permit flexibility with the terms of a heritage partnership agreement, and set out clear procedures for the termination of a heritage partnership agreement by order of the Welsh Ministers or a local planning authority.

Options 2, 3 and 4 would require separate sets of regulations for listed building heritage partnership agreements and scheduled monument heritage partnership agreements due to their derivation from distinct parent Acts. While the fundamental elements of the regulations would be similar, they might vary in detail either to reflect aspects of the parent legislation or the likely character

³ Historic England have set up no more than six heritage partnership agreements since they were introduced in England in 2013: [New Heritage Partnership Agreement Signed at King's Cross Station | Historic England](#)

of the relevant heritage partnership agreement agreements.

The regulatory impact assessment prepared for the Historic Environment (Wales) Act 2016 included an assessment of the options for heritage partnership agreements and their costs and benefits.⁴ This regulatory impact assessment is therefore only concerned with assessing the options for the regulations and their limited costs and benefits.

Option 1 — Do nothing and continue with existing consent regimes without making regulations.

Option 1 would block the introduction of heritage partnership agreements into Wales since they cannot be brought into effect without accompanying regulations for consultation and publicity, terms and termination procedures — all of which are left unspecified in the provisions of the 2016 Act. Current listed building and scheduled monument consent arrangements would accordingly remain unchanged. Owners undertaking programmes of repair or change to a number of historic assets would be obliged to apply for multiple individual consents.

Option 2 — Make regulations that give local planning authorities and the Welsh Ministers maximum flexibility when determining the consultation and publicity, terms and termination procedures required for a heritage partnership agreement.

Under option 2, regulations would simply require the Welsh Ministers or local planning authorities to undertake consultation and publicity prior to making or varying a heritage partnership agreement, without specifying how it should be done. This would give them freedom to adopt the most appropriate consultation and publicity arrangements for a heritage partnership agreement after considering its character and content, its extent and those who may have an interest in the agreement. Consultation and publicity could, accordingly, vary with each heritage partnership agreement.

As framed under this option, regulations would require a heritage partnership agreement to include terms, but would allow the heritage partnership agreement's parties to agree terms and vary them without constraint.

Similarly regulations would make provision for the termination of a heritage partnership agreement by order of the Welsh Ministers or the local planning authority, but would not set out the procedures to follow. The regulations also would not give an owner an opportunity to make representations to an independent person on a decision to terminate a heritage partnership agreement.

⁴ Historic Environment (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes 1 May 2015: [Microsoft Word - Historic Environment \(Wales\) Bill - Explanatory Memorandum \(incorporating RIA and EN\) - ENG \(senedd.wales\)](#)

Option 3 — Make regulations that place prescriptive requirements on local planning authorities and the Welsh Ministers for the consultation and publicity, terms and termination procedures required for a heritage partnership agreement.

Regulations envisaged under option 3 would put in place prescriptive requirements for consultation and publicity, including a notice in a newspaper, signs on site, a public meeting and making a heritage partnership agreement available for scrutiny in a central location in the area where the agreement will have principal effect.

The regulations would also set the term of the heritage partnership agreement. Each agreement would last 15 years, and this would not be renewable or variable by the parties to the heritage partnership agreement.

The option 3 regulations would likewise detail the procedures to follow if a heritage partnership agreement were to be terminated by order. These would be based on the current provisions in the 1979 and 1990 Acts pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.

If termination of a heritage partnership agreement by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

Option 4 — Combine elements of options 2 and 3 to make regulations that would establish minimum requirements for consultation and publicity, permit flexibility with the terms of a heritage partnership agreement, and set out clear procedures for the termination of a heritage partnership agreement by order of the Welsh Ministers or a local planning authority.

In option 4, regulations would set out minimum requirements for consultation and publicity. For a listed building heritage partnership agreement, these would require, for a specified period of time, the:

- provision of a copy of the heritage partnership agreement for inspection in a public place, such as a local library or council office;
- display of a notice on the local planning authority website;
- display of a notice on, or in the neighbourhood, of a site; and
- publication of details on how to make representations.

A scheduled monument heritage partnership agreement would require, instead, electronic publication for a specified period of:

- the address or location of the scheduled monument;
- a summary of the heritage partnership agreement (with a full copy available on request); and

- details on how to make representations.

Both regulations would also require the notification of those with an interest in the heritage partnership agreement. If the local planning authority or the Welsh Ministers deem that additional publicity would be beneficial, they could consider this on a case-by-case basis.

Under this option, the term of the heritage partnership agreement will be agreed by the consenting authority and the owner. Heritage partnership agreement guidance will contain information on what to consider when deciding on the term of a heritage partnership agreement — in some instances, five years might be appropriate, while in others, 20 years might be a suitable duration with specific review points built into the agreement.

Due to the amount of work and time invested in the establishment of a heritage partnership agreement and the potential resources committed to an agreement, it is deemed appropriate to have specific procedures in place to terminate a heritage partnership agreement by order. The approach adopted in option 3 for termination would also be followed here. The provisions for opposed revocations of consents in the 1979 and 1990 Acts would again provide the basis for the regulations to govern the termination of heritage partnership agreements by order. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.

If termination of a heritage partnership agreement by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

A person with an interest in a building affected by a termination order made by a local planning authority or the Welsh Ministers may be able to claim compensation if the order renders works abortive or otherwise causes loss or damage.

7. Costs and benefits

Costs

Option 1

Since this option continues with the existing consent regimes, there will be no costs in addition to those now incurred. Currently, there are no application fees for scheduled monument or listed building consents. However, there are invariably costs to owners in making applications. For all but the simplest works, drawings and plans need to be prepared, impact and other assessments completed and schemes of works developed. Architects, surveyors, archaeologists or other professionals often need to be employed to assist in the preparation of consent applications. The time taken to prepare an application

and the costs to owners are effectively impossible to estimate since they will vary widely depending upon the scale and complexity of the works covered by the individual consents. Nevertheless, a rough indication of the cost of a routine consent may be obtained from the Canal and River Trust's calculation in 2014 that a typical listed building consent application cost the organisation £1,500.⁵ This cost rises to approximately £1,650 in 2020 allowing for inflation.

The time taken and costs incurred by consenting authorities in processing applications can be more confidently estimated. Between April 2019 and March 2020, 86% of scheduled monument consent applications were determined by Cadw within 13 weeks of submission. It has been calculated that the processing of such an application costs Cadw £305 (based on salary levels at 1 April 2020), excluding any necessary travelling expenses.

Welsh local planning authorities generally determine listed building consent applications within 12 weeks from submission. Information provided by local planning authorities indicates that the cost of processing a listed building consent application varies depending upon the scale and complexity of the application and the amount of officer time required, but may range from £250 to over £1,500 (including publicity and travel costs).

However, the opportunity to make savings from the elimination of multiple, and often repetitive, consent applications will not be secured under option 1. The management of the scheduled monuments and listed buildings in the care of Glandŵr Cymru (the Canal and River Trust in Wales) will provide an indication of the benefits that heritage partnership agreements might deliver in this regard.

In its North Wales & Borders (Wales) region, Glandŵr Cymru is responsible for 91 listed buildings and one scheduled monument; that scheduled monument, however, is the Pontcysyllte Aqueduct and Canal which snakes across more than 16.5 kilometres of countryside from the English border to beyond Llangollen. In the South Wales & Severn (Wales) region, there are 132 listed buildings and two scheduled monuments in Glandŵr Cymru's care.⁶ As one would expect, in both regions the organisation manages substantial numbers of designated historic assets directly associated with the operation of their waterways, such as locks, aqueducts, canal bridges, and docks. In the respective regions, the assets of each type are often of similar age and construction and have largely similar conservation requirements.

To support its conservation and maintenance programmes, Glandŵr Cymru routinely secures consents for works to its designated assets. It also obtains clearances from the relevant consenting authorities for works that can proceed without the grant of formal consent. The numbers of consents and clearances secured in the two regions between 2012 and 2020 have been tabulated in

⁵ https://historicengland.org.uk/images-books/publications/err-act-case-studies/enterprise_and_regulatory_reform_act_case_studies/

⁶ <https://canalrivertrust.org.uk/refresh/media/thumbnail/34261-heritage-report-2017.pdf#:~:text=In%202016%2F17%20our%20heritage%20work%20at%20the%20Canal,of%20protecting%20and%20conserving%20the%20waterways%E2%80%99%20heritage.%20Foreword>

Table 1. Although details of the individual consents and clearances are not available, engagement with Glandŵr Cymru during the development of the Historic Environment (Wales) Act 2016 and the draft regulations indicates that the introduction of heritage partnership agreements would enable the organisation to reduce the numbers of consents and clearances required for the management of their waterways. This would be particularly true of the clearances, which could be covered by categories of works agreed in heritage partnership agreements that did not need consent.

	North Wales & Borders (Wales)				South Wales & Severn (Wales)			
	Consents		Clearances		Consents		Clearances	
Year	SM	LB	SM	LB	SM	LB	SM	LB
2012-13	0	1	11	9	0	0	0	9
2013-14	3	2	3	5	0	0	0	15
2014-15	1	0	3	3	0	0	0	2
2015-16	3	0	0	1	0	2	0	7
2016-17	1	0	2	5	1	1	0	7
2017-18	2	1	6	4	1	0	0	5
2018-19	1	1	9	4	0	0	0	6
2019-20	3	0	6	2	0	0	0	2
Total	14	5	40	33	2	3	0	53

Table 1: Glandŵr Cymru: Consents and clearances obtained for works to designated historic assets in Wales, 2012–2020⁷

SM = Scheduled monument LB = Listed building

Similarly, the efficiency and benefits of long-term management of the historic asset through the heritage partnership agreement will not be available under option 1.

Options 2, 3 and 4

Both owners and consenting authorities will incur costs in preparing heritage partnership agreements arising from the requirements of the provisions in the Historic Environment (Wales) Act 2016. Those costs were analysed in the regulatory impact assessment for that legislation and that exercise will not be repeated here. Only costs arising directly from the operation of the Regulations will be considered in the following impact analysis.

Option 2

Publicity / consultation

⁷ Information supplied by Glandŵr Cymru.

The Regulations would not place any additional direct costs on owners as the consultation and publicity arrangements will fall to the consenting authority.

While consultation and publicity are statutory requirements, in each case all arrangements would be left to the discretion of the consenting authority. This could vary from placing a notice on the website, which would have negligible cost, to holding a public meeting in the area or placing a notice in the newspaper. The main challenge would be to ensure some consistency in how individual local planning authorities handle arrangements — advice on what would be appropriate could be included in guidance but there would be no requirement on local authorities to follow the guidance. Cost is likely to be the determining factor rather than testing the content of the heritage partnership agreement. It is not possible to put an actual cost against this option.

Terms

The ability to set the term of the heritage partnership agreement without any constraints could be of benefit to both the consenting authority and owner as the term could be different for each heritage partnership agreement depending on the assets included and the works agreed. Generally, the longer the heritage partnership agreement the greater the savings for the parties involved. However, if a heritage partnership agreement is too long, it could enshrine outmoded conservation principles and methodologies to the detriment of the historic assets covered by the agreement. The risks are similar should a heritage partnership agreement be extended beyond its term without due consideration given to its embodied consents or the appropriateness of the works.

Termination

The primary Acts require the heritage partnership agreement regulations to include provision for the termination of a heritage partnership agreement or any part thereof by order. Only in exceptional circumstances — for instance, the complete breakdown of a relationship between an owner and a consenting authority — will an order be used to terminate a heritage partnership agreement or some portion of it. Option 2 would enable consenting authorities to terminate heritage partnership agreements or their provisions by order, but would leave the procedures for the exercise of those powers undefined in regulations. Owners would not have any recourse against orders or be able to make compensation claims. Without such detailed regulations, owners could be financially disadvantaged.

Option 3

Consultation and publicity

Regulations would not place any additional costs on owners.

The costs of prescriptive requirements for consultation and publicity would fall on the consenting authorities, either the Welsh Ministers or local planning authorities. Examples of the costs involved are captured below:

- Preparation of the site notice, website, deposit of the heritage partnership agreement documents at a central location and notification of organisations / people with an interest in the heritage partnership agreement: ½ day of an officer's time.
- Posting of the notice on site: ½ day of an officer's time due to travel, especially if the heritage partnership agreement covers more than one historic asset.

It is estimated that the cost of preparing and posting the notices would be in the region of £200, taking into account materials, time and mileage.

Organisation of a public meeting: the cost of this is likely to be in the region of £500 when publicity for the event, the preparation of the documents and ensuring presence at the event is fully factored in. There may also be room hire to consider if an appropriate consenting authority venue cannot be sourced.

Notice in a local newspaper: it is estimated that the cost of advertising can vary from £50 to £200 per advert depending on the advertisement and the local newspaper.

Consideration needs to be given as to whether these requirements are proportionate to the interest that there may be in a heritage partnership agreement. The heritage partnership agreement is likely to include consent for repetitive minor works and therefore consideration must be given to how many people would be interested in the newspaper advertisements or attending the public meetings. There may be better ways of targeting the people and organisations who would have constructive comments on heritage partnership agreements.

Terms

Regulations would stipulate the term of the heritage partnership agreement. Each heritage partnership agreement, irrespective of content or appropriateness, would be 15 years in length. There could be a cost associated with this to both owner and consenting authority. In some circumstances a longer heritage partnership agreement might be more appropriate – while in others 15 years could be too long and have a detrimental impact on the historic assets.

Termination

Regulations governing the termination of heritage partnership agreements by order would be based on the 1979 and 1990 Acts' provisions pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.

A consenting authority would have to serve notice of the proposal to terminate a heritage partnership agreement on the owner and other affected parties. If objections are raised, the Welsh Ministers would have to give affected parties — including, as may be, the owner, local planning authority and other

interested parties — an opportunity to make representations, either at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

The estimated costs to the Welsh Ministers of receiving representations would be as follows:

- public inquiry — £15,000; or
- hearing — £5,000.

The estimated cost for a local planning authority to make representations would be £1,742 — based on the roughly comparable cost of participation in the planning appeal process.⁸

An owner's costs for making representations are estimated at:

- attendance at a public inquiry — £4,800; or
- participation in a hearing — £1,200.⁹

Termination of a heritage partnership agreement may, under certain circumstances, render the consenting authority liable to pay compensation. It is not possible to estimate the costs of compensation claims since they will vary from case to case. If there is any dispute over the compensation awarded, matters involving the depreciation of the value of an interest in land may be referred to and determined by the Upper Tribunal.

Termination by order will only happen in exceptional circumstances; it is estimated that it may only happen once in a 10-year period or even more rarely. We are not aware, for instance, of any cases of an opposed revocation of a listed building consent under the powers in section 26 of the 1990 Act. The heritage partnership agreement itself would include provision for termination by agreement and therefore termination by order will only be considered when all other avenues have failed. Applications for compensation will only be permitted in certain circumstances and are likely to be even rarer than terminations by order.

Option 4

Consultation and publicity

⁸ <https://gov.wales/sites/default/files/publications/2019-06/planning-wales-act-2015-explanatory-memorandum.pdf> paragraph 7.420

⁹ <https://gov.wales/sites/default/files/publications/2019-06/planning-wales-act-2015-explanatory-memorandum.pdf> paragraph 7.425

The minimum requirements for consultation and publicity would be set out in Regulations.

For listed building heritage partnership agreements, this would provide consistency across local planning authorities in Wales, but also allow those authorities to undertake additional publicity when appropriate.

The minimum publicity for a listed building heritage partnership agreement would be:

- Preparation of the site notice, website, deposit of the heritage partnership agreement documents at a central location and notification of organisations / people with an interest in the heritage partnership agreement: ½ day of an officer's time.
- Posting of the notice on site: ½ day of an officer's time due to travel, especially if the heritage partnership agreement covers more than one historic asset.

It is estimated that the cost of preparing and posting the notices would be in the region of £200, taking into account materials, time and mileage.

Minimum publicity for a scheduled monument heritage partnership agreement would require the preparation of notices and their electronic publication — ½ day of an officer's time at a cost of approximately £100. There may be additional costs associated with posting copies of the draft heritage partnership agreement if requests are received from members of the public, but, since such requests are never likely to be numerous these will be minimal.

The consenting authority could choose to undertake additional consultation or publicity dependent on the public interest in the HPA. But the costs of any additional publicity would be proportionate to the nature of the agreement and property in question.

Terms

With this option, the term of the heritage partnership agreement would be negotiated by the consenting authority and owner and therefore they would be able to decide on the most appropriate term for the particular assets and circumstances.

There are no additional costs associated with this option.

Termination

Since the mechanisms for termination in option 4 mirror those in option 3, the costs outlined for option 3 will also apply here.

Benefits

Option 1

Since this option would bring no change to the existing scheduled monument and listed building consent regimes, it would confer no benefits.

Option 2

Option 2 would bring the heritage partnership agreement provisions contained in the Historic Environment (Wales) Act 2016 into force with minimal regulations and give owners and consenting authorities maximum flexibility when negotiating and managing heritage partnership agreements.

The incorporation of consents for agreed works in a heritage partnership agreement would be likely to eliminate the need for repeated individual consent applications over the lifetime of the agreement, bringing savings in time and resources to both the owner and the consenting authority. This would also be the case in options 3 and 4.

The consenting authority and owner would be able to agree the most appropriate and cost-effective way to discharge the consultation and publicity requirements. Similarly, the parties to the agreement would be free to decide the term of the heritage partnership agreement and extend or shorten it.

There are no benefits to providing flexibility with regard to the termination of a heritage partnership agreement by order. The primary legislation requires a heritage partnership agreement to set out how the parties can terminate it by agreement; if termination by order is required, something has gone wrong and relations between the parties have irreparably broken down. In such circumstances, well-defined, independent procedures for the termination of the heritage partnership agreement by order would be particularly important to protect the rights and interests of all parties involved.

While the flexibility afforded the parties to heritage partnership agreements under option 2 would seem to offer many benefits, the result, even with clear and carefully drafted guidance, is likely to be heritage partnership agreements exhibiting wide variations in their scope and terms. Widespread and substantial inconsistencies between heritage partnership agreements could easily give rise to doubts about the fundamental equity of the agreements.

Option 3

Consultation / publicity

As each heritage partnership agreement would be publicised identically, interested parties would know where to look for information on a prospective heritage partnership agreement. Advertisements placed in the local newspaper would alert the community to the proposed heritage partnership agreement. These advertisements would be supplemented by site notices, for the attention of local residents and casual passers-by, and website notices. People with an interest in the historic assets affected by the heritage partnership agreement would be contacted directly by the consenting authority. Draft heritage partnership agreement documents would be made available in a central

location to make them accessible to people who wish to scrutinise the agreement in detail.

The local community would have an opportunity to comment on the heritage partnership agreement in a public meeting, including an opportunity to question the appropriateness of the proposed works at that meeting.

Terms

The benefit of having identical terms for every heritage partnership agreement, irrespective of content, is that it provides transparency and clarity. In addition it reduces the need for the consenting authority and owner to negotiate and agree on the length of the agreement.

Termination

Having the procedures set out in regulations should the heritage partnership agreement have to be terminated provides clarity and security to the owner and the consenting authority that each case would be considered fairly and independently. The procedures would be based on the current provisions in the 1979 and 1990 Acts pertaining to opposed revocations of consents. If not issued by the Welsh Ministers, a termination order would need to be confirmed by them.

If termination of a heritage partnership agreement by order is proposed and there are objections, the Welsh Ministers would be obliged to afford affected parties — including, as may be, the owner, local planning authority and other interested parties — an opportunity to make representations; this could be done at a local inquiry or at a hearing before a person appointed by the Welsh Ministers.

This provides a transparent and fair process for all sides should something go wrong. It also allows compensation to be paid to the owner should it be justified by circumstances. Regulations, which set out the procedures to follow for the termination of the heritage partnership agreement by order, do not replace the requirement in the primary legislation for provision for the termination of the heritage partnership agreement by agreement.

Option 3 would ensure uniformity in the fundamental elements of all heritage partnership agreements. While this would ensure consistency and remedy some of the issues that arose with option 2, it would remove much of the flexibility which would allow heritage partnership agreements to be tailored to suit the particular character and circumstances of the historic assets being managed. This is particularly the case with regard to the term of the agreement, which ideally would be a matter of careful negotiation between the owner and the consenting authority taking into account conservation and management issues.

Option 4

Publicity / consultation

Regulations would set out the expected publicity for a heritage partnership agreement. The requirements would differ slightly for scheduled monument and listed building heritage partnership agreements, but in each case the consenting authority would have the option of delivering additional publicity should they deem it beneficial. This provides the balance between making sure that people are aware of the proposals and what is proportionate to the works proposed.

The publicity for a scheduled monument heritage partnership agreement would require electronic publication of a summary of the heritage partnership agreement and supply of a copy of the draft agreement to any person who requested one. This approach to publicity reflects that, because of the constraints on the scheduled monument consents that can be granted, the agreed works covered by scheduled monument heritage partnership agreements are likely to be of relatively minor impact and of narrow interest. Nevertheless, the Welsh Ministers will have to inform those who have an interest in the historic assets concerned of the proposed agreement.

Regulations for a listed building heritage partnership agreement would impose a slightly wider range of publicity requirements. Placing notices on the local planning authority website and on or near the site, as well as making the documents available in the local area, would inform local communities of the proposed heritage partnership agreement. In addition the consenting authority would need to inform those with an interest in the heritage partnership agreement; these might include amenity societies, local groups or individuals who have asked to be informed of any heritage partnership agreement in the local area. Many of the works covered in the heritage partnership agreement are likely to be repetitive, relatively minor works, so these publicity requirements would balance openness and transparency with pragmatism and economy.

Terms

This option would allow the consenting authority and owner to agree on the most appropriate term for the heritage partnership agreement based on the proposed works, nature of the sites and ownership. This could vary from 5 to 20 years although we would suggest that 10 to 15 would be normal. Guidance issued by the Welsh Government would include what needs to be considered when making the decisions on terms.

Termination

The benefits outlined for option 3 would apply with equal force here. Defined procedures for termination by order would assist owners and consenting authorities to ensure a fair and transparent process is followed when something has gone wrong. The heritage partnership agreement would also include provision on how the heritage partnership agreement could be terminated by agreement.

Preferred option

The Welsh Government consulted on Option 4 as the preferred option as it includes flexibility within what are voluntary agreements between consenting authorities and owners. The consultation and publicity requirements would be proportionate to the kind of works that would be included in the heritage partnership agreement. However, the arrangements for termination of a heritage partnership agreement by order would be prescriptive as this is a safety net for the owner.

8. Consultation

The Regulatory Impact Assessment was included in the heritage partnership agreement consultation as described in paragraph 5. A specific question was asked about the assessment and the respondents generally agreed with option 4 as the preferred option as it provides flexibility within the agreement as well as proportionate statutory requirements.

9. Integrated Impact Assessment

Heritage partnership agreements were introduced in the Historic Environment (Wales) Act 2016. During the development of this Act, Cadw engaged with a range of historic environment stakeholders likely to be interested in or affected by the introduction of heritage partnership agreements.

In preparation for our consultation on the heritage partnership agreement Regulations and guidance, we enhanced our distribution list to make sure that notice of the exercise was received by our regular stakeholders, those with a wider interest in the historic environment in Wales and people from protected characteristic groups. The consultation was sent via the Government Delivery Service with over 1,100 recipients. The consultation was also signposted more widely from the Welsh Government's social media platforms.

The heritage partnership agreement Regulations are procedural and administrative in nature and, as such, will have minimal direct impact on the assessments undertaken.

Heritage partnership agreements will, though, improve the sustainable management of Wales' designated historic assets through the creation of long-term management plans agreed by consenting authorities, owners and other interested parties working in voluntary partnership. The agreements will support integrated and coherent programmes of work over periods of years. This holistic, long-term approach to the management of historic assets will not only benefit the assets, but also bring savings to the parties involved. This was acknowledged by some respondents to the consultation but there were concerns expressed that local planning authorities may not have the resources required to develop a heritage partnership agreement and that the administrative costs were underestimated. There was no evidence provided, though, to support this.

The Regulations for heritage partnership agreements have a built-in requirement for consultation and publicity. This will have a positive impact on public engagement and local understanding of works being carried out to historic assets

in the area. Research has found that people feel that investment in the historic environment makes their area a better place in which to live, improving social well-being. Following the consultation, a request was made to change the Regulations so that local planning authorities no longer need to provide a full copy of the document to all owners and occupiers. We agreed that this approach would reduce the administrative burden on them and the Regulations have been changed to state that they need only be notified.

The long-term nature of the agreements provides owners with the opportunity to take account of climate change and to consider appropriate action for future events such as flooding. The agreements will also afford opportunities to consider the carefully managed use of renewable energy systems that can offer significant energy, carbon and financial savings.

The importance of arts, culture and heritage has been highlighted in the National Survey for Wales. The long-term management of our designated historic assets is vital so that present and future generations can continue to appreciate these nationally important sites. Heritage partnership agreements will assist individuals and organisations to make appropriate decisions for the long-term conservation of those historic assets. The agreements will directly promote and protect culture and heritage as they embody an integrated and holistic approach to the sustainable management of historic assets. During the consultation we received constructive feedback on the use of the Welsh language and how the Regulations and guidance could be used to encourage and support its use. We have taken on board these comments and have amended the guidance to highlight this and how integrating Welsh place names into heritage partnership agreements can make a positive contribution to the well-being goal for culture and the Welsh language as well as more widely in communities.

Heritage partnership agreements will assist individuals and organisations to make appropriate decisions for the long-term conservation of those historic assets. The agreements will directly promote and protect culture and heritage as they embody an integrated and holistic approach to the sustainable management of historic assets.

Heritage partnership agreements have been developed in accordance with the sustainable development principle with the aim of achieving well-being goals set out in the Well-being of Future Generations Act 2015. By improving the management and conservation of the Welsh historic environment, the agreements will contribute to the goals of 'A Wales of vibrant culture and thriving Welsh language'. More specifically, they will contribute positively towards the national indicator 'Percentage of designated historic environment assets that are in stable and improved conditions', introduced to measure progress towards the well-being goals. Some respondents to the consultation agreed that heritage partnership agreements will be a useful way of monitoring this indicator.

Individual heritage partnership agreements will be monitored and reviewed as there is a legal requirement to do so. Cadw will receive a copy of every heritage partnership agreement and in many cases will be a party to agreements. As a

result, Cadw will be in a position to review the guidance and the Regulations and to amend them, if appropriate.

In addition, as part of the ongoing evaluation of the implementation of the Historic Environment (Wales) Act 2016, reviews will be undertaken to monitor the number of agreements that are in place along with the conservation benefits that the agreements have brought about.

10. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The Regulations will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.

The Regulations are not expected to have any impact on competition or place any restrictions on new or existing suppliers.

The Regulations are not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

11. Post implementation review

Heritage partnership agreements are long-term agreements that are likely to last between 10 and 15 years. Formal reviews won't be undertaken until we

have a substantive number of agreements in place to make any review meaningful. This may take up to five years from when the provisions come into force. However, as these agreements are a new concept in Wales, we will continually seek feedback on their effectiveness and consider any changes that may be required to the Regulations to improve them as they are developed.

As Welsh Ministers will be a party to some of the agreements, this provides an opportunity to easily collate information as to how they are working.