

Number: WG34666



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Drafts of a new ecclesiastical exemption order
and best-practice guidance documents

Date of issue: **16 April 2018**

Action required: Responses by **13 July 2018**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This consultation seeks your views on:

- i. the draft Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018;
- ii. draft best-practice guidance, *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption*; and
- iii. draft best-practice guidance, *Managing Scheduled Monuments in Wales*.

These have been developed as components of a wider programme to improve the protection and management of the Welsh historic environment.

How to respond

This consultation will close on 13 July 2018. You may respond online, by email or by post.

Online

Please complete the online questionnaire on the consultation pages of the Welsh Government website:

<https://beta.gov.wales/consultations>

Email

Please complete the consultation response form at Annex D and send it to:

historicensementleg@gov.wales

Post

Please complete the consultation response form at Annex D and send it to:

Regulations and Guidance Consultation 3
Legislation and Policy Team
Cadw
Welsh Government
Plas Carew
Unit 5/7 Cefn Coed
Parc Nantgarw
Cardiff
CF15 7QQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Historic Environment (Wales) Act 2016
<http://www.legislation.gov.uk/anaw/2016/4/contents>

Planning Policy Wales, 'The Historic Environment'
<http://gov.wales/docs/desh/publications/161117ppw-chapter-6-en.pdf>

Technical Advice Note 24: The Historic Environment
<http://gov.wales/topics/planning/policy/tans/tan-24/?lang=en>

Conservation Principles for the Sustainable Management of the Historic Environment in Wales
[http://cadw.gov.wales/docs/cadw/publications/Conservation Principles EN.pdf](http://cadw.gov.wales/docs/cadw/publications/Conservation_Principles_EN.pdf)

Contact details

For further information on this consultation, please contact:

historicenvironmentleg@gov.wales

Legislation and Policy Team
Cadw
Welsh Government
Plas Carew
Cefn Coed
Parc Nantgarw
Cardiff
CF15 7QQ

03000 259 091 / 03000 259 090

Data protection

How the views and information you give us will be used

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

Names or addresses we redact might still get published later, though we do not think this would happen very often. The Freedom of Information Act

2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Your data will be kept for no more than three years.

Under the data protection legislation, you have the right:

- to access the personal data the Welsh Government holds on you;
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: <https://ico.org.uk/>

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email Address: Data.ProtectionOfficer@gov.wales

Introduction

1. The Historic Environment (Wales) Act 2016 ('the 2016 Act') made important improvements to existing systems for the protection and management of the Welsh historic environment. New secondary legislation, planning policy and advice and best-practice guidance has also been needed to support and promote the careful management of change in the historic environment in accordance with current conservation philosophy and practice.
2. This is the third historic environment consultation on proposed secondary legislation and best-practice guidance prepared to complement the 2016 Act. It covers:
 - A. the draft Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018;
 - B. draft best-practice guidance, *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption*; and
 - C. draft best-practice guidance, *Managing Scheduled Monuments in Wales*.

The consultation briefly discusses each document, points to the annex containing the pertinent draft and asks relevant questions.

3. Since the consultation covers more than one area of the historic environment, some of the questions may fall outside your interest or experience. Therefore, please feel free to answer as many or as few of the questions as you like.

A. The draft Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018

4. The Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act') requires the Welsh Ministers to compile a list of buildings of special architectural or historic interest. It prevents works being carried out to a listed building that would affect its character as one of special architectural or historic interest unless authorised by the grant of listed building consent. In most cases, the formal consent systems used to manage change to listed buildings are administered by local planning authorities. However, the 1990 Act makes separate arrangements for the management of listed ecclesiastical buildings through a practice known as ecclesiastical exemption.
5. The 1990 Act also prohibits the demolition of an unlisted building in a conservation area unless conservation area consent has been obtained from the appropriate authority, which is usually the local planning authority, but again makes provision for ecclesiastical exemption for places of worship.

6. The 1990 Act specifies that the exemption is only applicable to 'ecclesiastical buildings for the time being in use for ecclesiastical purposes'. The same Act allows the Welsh Ministers to limit the operation of ecclesiastical exemption in a variety of ways, including by excluding it or by restricting it to particular buildings or types of building, particular denominations or faiths, or particular types of work.
7. Ecclesiastical exemption in Wales is currently regulated by The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (SI 1994/1771) ('the 1994 Order') which confines the extent of the exemption and limits it to six denominations. The 1994 Order originally covered both England and Wales, but was replaced in England.
8. The exemption remains in place because the systems of control maintained by the exempt denominations are considered to provide equivalent protection to that provided by the secular system.
9. The exemption also recognises that church buildings may need to change in order to remain viable as living places of worship.

Proposal

10. A draft of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018 is attached at Annex A. This will revoke and replace the 1994 Order.
11. The main changes proposed to ecclesiastical exemption are:
 - removal of the exemption for conservation area consent;
 - removal of the United Reformed Church from the exempt denominations; and
 - clarification regarding the buildings covered by the exemption to eliminate occasions when both secular and denominational consents are needed.
12. The 1990 Act states that the exemption can only apply to a building in use for ecclesiastical purposes. Conservation area consent is only required for the total (or near total) demolition of an unlisted building in a conservation area — in which case it is difficult to envisage ecclesiastical use continuing. The only circumstance where the exemption may still apply is where a major part of the building is to be demolished with ecclesiastical use continuing in what remains. In light of the limited applicability of the conservation area ecclesiastical exemption, the new draft Order removes it. It will be clearer for both local planning authorities and the exempt denominations if all conservation area consent cases are handled under the secular system.
13. The exempt denominations included in the proposed Order are: the Church in Wales, the Roman Catholic Church, the Methodist Church, the Baptist Union of Great Britain, the Baptist Union of Wales and the Church of England (for those churches in Wales that are within its faculty jurisdiction). The United Reformed Church has declared its desire to

return to secular control under local planning authorities and requested its removal from the proposed Order.

14. It is proposed that the exemption will cover:
 - a listed building whose primary use is as a place of worship; and
 - any object or structure fixed to that building, or within its curtilage, which, although not fixed to the building, forms part of the land.
15. The extension of the exemption to cover separately listed curtilage structures is a change from the 1994 Order. It will eliminate situations in which secular consents have been required for works to listed ecclesiastical structures, such as lychgates or other churchyard features, even though the existing mechanisms of the exempt denominations provided equivalent controls.

Q1.	Do you agree that ecclesiastical exemption for conservation area consent should be removed? If not, please specify in what circumstances it should still apply.
------------	--

Q2.	Do you agree that any object or structure within the curtilage of a listed church building should be considered part of that church building for the purposes of ecclesiastical exemption, whether or not it is listed in its own right? If not, please explain why.
------------	---

Q3.	Do you agree that the draft Order has not made any substantive changes other than those described above?
------------	---

B. Draft best-practice guidance: *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption*

16. *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption* is best-practice guidance prepared to support the operation of the proposed Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018. The draft text is attached at Annex B. It sets out the guiding principles to consider when planning changes to listed places of worship covered by the Order. It also sets out a code of practice for denominational consent procedures that explains what should be included in the decision-making process in order for it to provide equivalent protection to the secular system.
17. The best-practice guidance is aimed principally at those denominations which are already exempt from the secular system of control. It will also be of interest to local planning authorities, congregations and individuals with an interest in the protection of listed places of worship.

Q4.	Do you agree with the guiding principles set out in part 4 of <i>Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption</i>? If not, how would you change them?
------------	--

Q5.	Do you agree that the code of practice for denominational consent procedures covers the key issues? If not, what is missing?
------------	---

C. Draft best-practice guidance: *Managing Scheduled Monuments in Wales*

18. Since monuments were first legally protected in 1882, over 4,000 sites in Wales have been designated through scheduling. They encompass a diverse array of monuments ranging from archaeological sites completely buried below ground, through the standing ruins of Wales's great medieval castles and monasteries, to military structures from the time of the Cold War.
19. *Managing Scheduled Monuments in Wales* is draft best-practice guidance (attached at Annex C) that sets out the general principles to consider when managing and making changes to scheduled monuments. It explains how to apply for scheduled monument consent and the roles and responsibilities of owners and Cadw, the Welsh Government's Historic Environment Service.
20. The guidance is aimed principally at owners, occupiers and managers of scheduled monuments. It explains what it means to own a scheduled monument and how to care for it. It should also help owners, occupiers and managers to take account of Cadw's *Conservation Principles for the Sustainable Management of the Historic Environment in Wales*.
21. The management and maintenance practices are equally applicable to all monuments, whether scheduled or not, and will be helpful for anyone with an interest in understanding and caring for Wales's historic environment.
22. Decision-making authorities should use this guidance alongside *Planning Policy Wales*, *Technical Advice Note 24: The Historic Environment* and Cadw's *Conservation Principles* to inform their own policies and advice, and the statutory decision-making process.

Q6.	Do you agree that the draft guidance, <i>Managing Scheduled Monuments in Wales</i>, clearly explains the roles and responsibilities of those involved in the management and maintenance of scheduled monuments? If not, how could it be improved?
------------	--

Q7.	Do you agree that the draft guidance clearly explains the scheduled monument consent process? If not, how could it be improved?
------------	--

Q8.

Do you agree that the draft guidance gives sufficient information to support the careful management of change to scheduled monuments? If not, what could be added?