

Number: WG34666



Welsh Government  
Consultation — summary of response

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

Date of issue: **October 2018**

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

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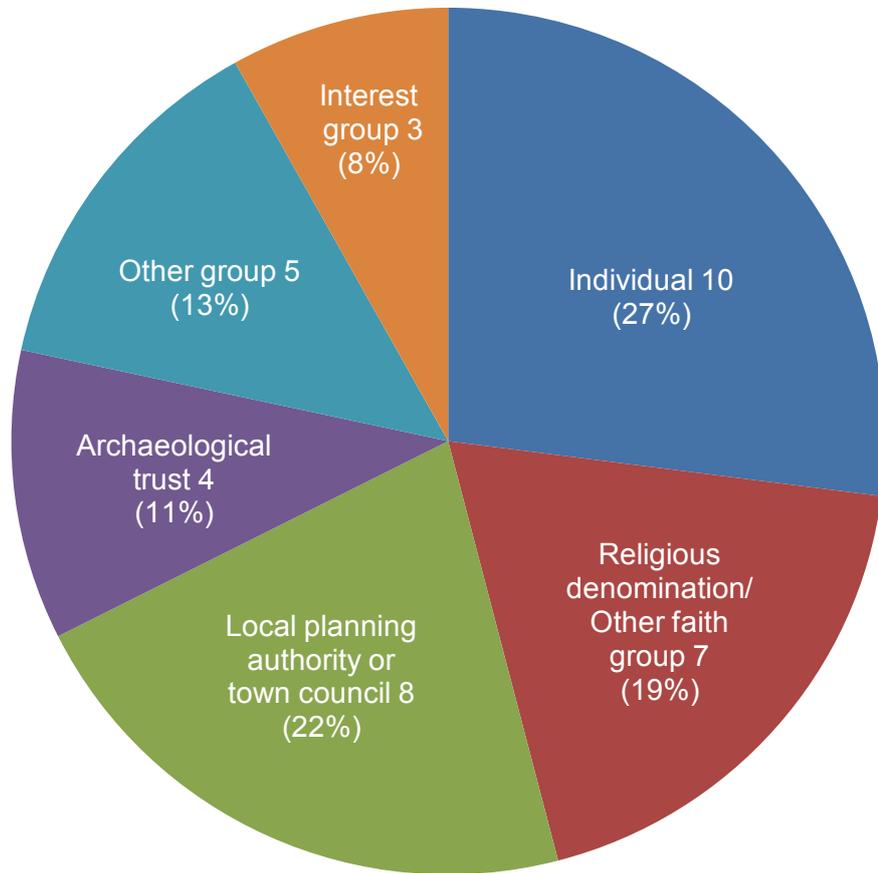
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## Introduction

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 have 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. Between 16 April and 13 July 2018, the Welsh Government conducted a twelve-week public consultation on proposed secondary legislation and best-practice guidance prepared to complement the 2016 Act. This report summarises the contributions to that consultation and sets out the Welsh Government's responses.
3. The consultation sought the views of respondents on:
  - 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*.
4. The consultation was published on the Welsh Government's dedicated consultation web pages, where the draft Order and guidance documents could be downloaded. The response form was available as an online form and as a downloadable Word document.
5. A variety of vehicles were used to publicise the consultation. It was signposted on the Culture, Tourism and Sport pages of the Welsh Government website and on the Cadw website. The publication of the consultation was featured in Cadw's 'Historic Environment Update', which was distributed to around 350 stakeholders and interested members of the public. An email reminder was sent out to the same recipients.

## The responses

6. The consultation received 38 replies. One online response was submitted with entirely blank fields and has therefore not been included in the statistics that follow. A full list of respondents is provided in Annex 1, with details omitted where individuals have requested anonymity.
7. Over half of the responses (21) were sent from Welsh addresses. While the rest were sent from outside Wales or from undisclosed addresses, virtually all of them reflected clear involvement in the management of the Welsh historic environment and a direct interest in the consultation proposals.
8. The consultation responses have been categorised in Figure 1.



**Figure 1. Consultation responses by category**

9. Since the consultation covered two discreet topics, respondents were invited to disregard any questions that fell outside of their interest or experience. Consequently, there were null responses for every question, and these have been excluded from the statistics in the detailed analysis of the individual questions that follows.

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

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

Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
31	1	1	2	<b>35</b>
88%	3%	3%	6%	<b>100%</b>

**Summary analysis**

10. There was overwhelming support for removing ecclesiastical exemption for conservation area consent, with 31 of the 35 respondents agreeing. One consultee disagreed, whilst a further three did not commit to a view but made substantive comments.
11. Generally respondents, including local planning authorities and conservation groups, considered that removing exemption for conservation area consent would simplify and strengthen the system of protection by providing clarity and consistency. However, the number of additional conservation area consent applications would be low.
12. One religious organisation disagreed with removing the ecclesiastical exemption for conservation area consent, maintaining that the exemption should continue for all unlisted buildings and structures in a conservation area.
13. Two responses from bodies representing religious organisations affected by the proposal did not express a firm view, supporting the proposal in principle but with reservations. They were concerned that congregations might need conservation area consent and denominational consent for minor works if removing the exemption had an impact on small-scale partial demolitions and works to certain boundary walls. Guidance would have to set out clearly when conservation area consent would be required.

### The Welsh Government response

14. Conservation area consent is only required for the total (or near total) demolition of an unlisted building in a conservation area. It is difficult to see how demolition on that scale could be reconciled with a building's continuing ecclesiastical use — a statutory requirement for ecclesiastical exemption. The Welsh Government believes that both local planning authorities and the exempt denominations will find it clearer if all conservation area consent cases are handled under the secular system. We have augmented the supporting guidance with more detailed information on when conservation area consent will be required.

<b>Q2.</b>	<b>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.</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
25	6	2	2	<b>35</b>
71%	17%	6%	6%	<b>100%</b>

### Summary analysis

15. Of the 35 responses to the question, there was strong support for the proposal with 25 agreeing. Six disagreed with the proposed changes, two neither agreed, nor disagreed and two only made comments.
16. Six respondents, from a variety of organisations, disagreed strongly with the proposal, arguing that the exemption should only apply to buildings and structures actively used for worship. They noted that many buildings within the curtilage of ecclesiastical buildings have secular uses, such as offices or independent play schools. Some consultees argued that curtilage structures such as lychgates and graves form part of the visual amenity of the local area and are publicly accessible. Works to such curtilage buildings and structures therefore should be considered under the wider secular system.
17. Four replies were non-committal, but offered comments. A regional conservation group accepted the principle of the change, but was concerned that different denominations implemented the exemption inconsistently across Wales and pressed for more effective monitoring by Cadw.

### **The Welsh Government response**

18. The Welsh Government recognises the concerns of those opposed to the proposed change and their views that the existing secular arrangements for listed buildings in the curtilage of a listed church building should continue. However, we are of the view that if denominational controls are sufficient to control works to the church — the largest, most complex and probably the oldest structure on the site — then they should be satisfactory for any other buildings or structures within its curtilage.
19. We have noted the comments of some respondents about the inconsistent application of the exemption by denominations across Wales. The new guidance will support greater consistency by providing a code of practice for denominations to follow in administering the exemption. It also sets out arrangements for monitoring and annual reporting to the Welsh Government.

<b>Q3.</b>	<b>Do you agree that the draft Order has not made any substantive changes other than those described above?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
28	1	3	2	<b>34</b>
82%	3%	9%	6%	<b>100%</b>

## Summary analysis

20. The overwhelming majority of consultation responses agreed that the Order did not make any other substantive changes. Only one response disagreed, whilst four neither agreed nor disagreed or only commented.
21. In the opinion of the respondent who disagreed, the Welsh Government should have taken the opportunity to modernise the exemption process. Drawing on personal experience, this individual felt that the exemption regime needed closer monitoring and was neither as effective nor as transparent as the secular system. Another individual, although agreeing with the question, added comments to similar effect.
22. One local authority response that neither agreed nor disagreed with the question suggested that the exemption system would benefit from: the introduction of an effective enforcement system, local authority membership on diocesan advisory committees and regular reviews of the denominations' effectiveness by the Welsh Government.

## The Welsh Government response

23. The guidance, *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption*, will support effective monitoring by requiring the exempt denominations to report annually on their control processes. The report will also record who provided specialist advice to the decision-making body. The Welsh Government believes that adherence to the principles and code of practice in the guidance, along with the implementation of its arrangements for monitoring and review, will create a robust framework for managing change in listed places of worship in Wales.

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

<b>Q4.</b>	<b>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?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
26	4	2	3	<b>35</b>
75%	11%	6%	8%	<b>100%</b>

## Summary analysis

24. A substantial majority of respondents agreed with the question, and several provided comments, whether or not they agreed.
25. The need for rigour, consultation, openness, transparency and accountability comparable to that in secular systems of control was highlighted in several

replies. Some who agreed with the question felt that it would be helpful to clarify precisely what that would mean in practice, whilst some who disagreed did so because they felt that comparable standards were not being applied.

26. Several responses raised the issue of monitoring, which was seen to be important in achieving comparability with secular systems. One church-based organisation felt that expectations for monitoring the effects of change needed to be realistic and specific.
27. The requirement for heritage impact assessment was also generally welcomed. One local authority suggested that the exempt denominations should have to use an assessment regime that exactly reflects the secular one. A group representing conservation officers in Wales also remarked that further guidance on the preparation of heritage impact statements would be useful.
28. Several respondents felt that further definition of 'ecclesiastical purposes' would be helpful, particularly in light of the growing use of church buildings for purposes other than worship. The Catholic Church raised the issue of the exclusion of presbyteries from the exemption. These quarters for a parish priest are often attached to a place of worship and form part of a listed complex.
29. Some consultees noted that the requirement for applications by third parties to be made under the secular system of listed building consent could lead to dual controls. They asked whether this could be re-examined.

### The Welsh Government response

30. The Welsh Government welcomes the firm support for the guiding principles. In light of respondents' suggestions, we have clarified and enhanced the guidance. It now gives greater attention to curtilage structures and incorporates a check-list of subjects for inclusion in a heritage impact statement. Although presbyteries and other residences of ministers of religion are expressly excluded from the scope of the exemption, the guidance affords greater recognition to this class of buildings and suggests improved advice-seeking and consultation. Since a third-party application may have an impact that extends beyond the ecclesiastical community involved, it is appropriate that the local planning authority plays a part in the consent process.

<b>Q5.</b>	<b>Do you agree that the code of practice for denominational consent procedures covers the key issues? If not, what is missing?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
21	7	4	3	<b>35</b>
60%	20%	11%	9%	<b>100%</b>

### Summary analysis

31. The majority of consultees agreed with the question, and most provided detailed comments, including suggestions for strengthening the guidance in several areas.
32. Where respondents did not agree, they expressed concerns over the effectiveness of existing arrangements for consultation, compliance and enforcement, and closure and redundancy. They called for these issues to be addressed with greater clarity.
33. A number of points were raised about the requirement to advertise proposals for works. Several respondents felt that the use of local newspapers for this purpose was now an anachronism. Others felt that works to the interior of grade II buildings should be advertised. One local authority representative proposed that this should be via notices on the building or adjacent to it.
34. Several replies highlighted issues relating to arrangements for accessing specialist advice, not only from advisory bodies, but also through pre-application advice and consultation. The archaeological trusts and the amenity societies felt that they could provide more effective assistance if they were involved earlier. The amenity bodies also felt that they could contribute advice more effectively if annual monitoring reports were shared with them.
35. The need to use expert advisors accredited to relevant professional standards prompted some concerns. Many advisors are volunteers, including retired professionals who may not be accredited.
36. The amenity societies had reservations about the consultation and determination process. More guidance would ensure that appropriate and proportionate information accompanies applications and reaches consultees. Conditions should not be used to make up for deficiencies in the information submitted with an application.
37. One of the archaeological trusts disagreed with the question, maintaining that arrangements for dealing with archaeology were inconsistent and piecemeal. It asserted that the provision of training would be a valuable adjunct to guidance.

### **The Welsh Government response**

38. While the majority of respondents felt that the code of practice covers the key issues, the Welsh Government has clarified and strengthened the guidance in light of the detailed comments and suggestions made by all consultees. We have removed the requirement to advertise applications in local newspapers. However, it is important that denominations use local networks to create wide community awareness of proposed changes. The implementation of the arrangements for monitoring and annual reporting to the Welsh Government will help to address issues of consistency in the application of the guiding principles and code of practice.

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

<b>Q6.</b>	<b>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?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
23	3	3	1	<b>30</b>
77%	10%	10%	3%	<b>100%</b>

### Summary analysis

39. A substantial majority of respondents agreed with the question. Seven consultees, three of whom did not agree, provided comments and suggestions to improve the guidance.
40. Two respondents who disagreed with the question thought that the guidance should stress the importance of caring for scheduled monuments in the public interest to give owners a greater sense of responsibility. They also suggested that the guidance should advise consultation with the Welsh archaeological trusts and National Park archaeologists on the impact of permitted works on unscheduled archaeology.
41. Amongst the consultees who agreed, two remarked that owners might find some of the terms used in the guidance difficult to understand, such as 'management agreements', 'heritage impact statements', 'heritage partnership agreements' and 'statements of significance'.
42. Several suggestions were made to improve the table, 'Maintaining Your Scheduled Monument'. Two respondents asked that the section on burrowing animals explain how it applies to badgers as a protected species. They also suggested that more detail should be given on the consents and permissions needed outside a scheduled area; development outside a scheduled area, for example, still requires planning permission. One consultee felt that the table should specify that scheduled monument consent is only required for activity within a scheduled area.
43. Another respondent found the principles applied to repair and restoration too prescriptive. There might also be confusion about the appropriate application of recommended methods. For instance, a 'differentiation' approach might be appropriate for a major phase of repair, but ill-suited to several phases of small-scale maintenance work such as repointing.

### The Welsh Government response

44. While the majority of consultees agreed with the question, the Welsh Government has considered the detailed comments offered and amended the guidance. We have set out more fully the roles and responsibilities of those involved with scheduled monuments and provided accessible explanations of a

number of terms and processes. Whilst the Welsh Government encourages all owners to manage their scheduled monuments responsibly, we do so within the confines of current legislation and our *Conservation Principles for the sustainable management of the historic environment in Wales*.

<b>Q7.</b>	<b>Do you agree that the draft guidance clearly explains the scheduled monument consent process? If not, how could it be improved?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
25	0	4	0	<b>29</b>
86%	0%	14%	0%	<b>100%</b>

### Summary of analysis

45. The overwhelming majority of consultees agreed that the guidance clearly explains the scheduled monument consent process. None of the four respondents who neither agreed, nor disagreed made any comments.
46. Five respondents believed that the guidance could expand on the relationship between scheduled monument consent and other consenting and permission regimes. For example, it should make clear to developers and statutory undertakers that scheduled monument consent is often required in addition to planning permission or licences for marine, forestry or tipping operations.
47. Two respondents found the advice on metal detecting contradictory. While one section suggests that a consent would be issued for metal detecting, another states that the use of a metal detector is not suitable on a scheduled monument.

### The Welsh Government response

48. The Welsh Government has acted on the positive suggestions offered by respondents to strengthen the guidance and improve the explanation of the scheduled monument consent process.

<b>Q8.</b>	<b>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?</b>
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Agree	Disagree	Neither Agree Nor Disagree	Comment Only	Total
21	3	5	0	<b>29</b>
73%	10%	17%	0%	<b>100%</b>

### Summary of analysis

49. Most respondents agreed with the question. Seven, including the three who disagreed and one who neither agreed, nor disagreed, offered comments.
50. Among those who disagreed, two believed that the premise of managing change to a scheduled monument is in itself harmful. They felt that the guidance's tone was too permissive and more emphasis should be placed on maintaining a monument in its existing condition. The legislative context for the protection of scheduled monuments should also be given greater prominence.
51. Another respondent, who also disagreed with the question, considered some of the statements in the guidance too prescriptive.
52. Four other consultees asked for further information on matters such as the discovery of new finds during development, stock access and vegetation management, and non-invasive archaeological surveys. One also suggested that more emphasis should be placed on discussing excavation proposals with Cadw at an early stage.

### **The Welsh Government response**

53. A clear majority of consultees regarded the information contained in the guidance to be sufficient to support the careful management of change to scheduled monuments. However, the Welsh Government has given careful consideration to the comments of respondents. We have made amendments to the guidance in an effort to strike a balance between providing practical advice to aid the sustainable management of scheduled monuments and setting out the wider legislative context within which any changes must be made.

### **Additional Comments**

<b>Q9.</b>	<b>We have asked a number of specific questions. If you have any related issues that we have not specifically addressed, please raise them here.</b>
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### **Summary of additional comments**

54. Thirteen respondents made additional comments. Those directly relevant to earlier questions were considered in their analysis.
55. One respondent remarked that there should be clearer guidance about the actions that the Welsh Government would take if works to a scheduled monument were not to an acceptable standard, especially in cases where the issues is with the execution of the works, rather than the specification.
56. One respondent suggested that church buildings should be scheduled rather than listed, thereby removing them from the ecclesiastical exemption and placing them under the control of the Welsh Ministers.
57. Another consultee proposed that the mechanisms for the management of change to cathedrals in Wales need to be examined and strengthened.

58. Two respondents described their personal experience of working within the ecclesiastical exemption procedures, and explained the challenges and barriers that they faced. They believed that works had been authorised which did not take into consideration the important heritage value of a place of worship and called for more stringent rules around development associated with ecclesiastical buildings.

### **The Welsh Government response**

59. The draft best-practice guidance, *Managing Scheduled Monuments in Wales*, includes information on the enforcement powers available to the Welsh Ministers in the event of unauthorised works. An important aspect of the contract management of any works to a scheduled monument is monitoring their execution.
60. The Ancient Monuments and Archaeological Areas Act 1979 prevents the scheduling of any ecclesiastical building in use for ecclesiastical purposes. The Welsh Government is of the view that the exempt denominations, with their stringent control procedures, are best placed to manage change to listed places of worship. However, we acknowledge that closer monitoring of the ecclesiastical exemption regime will be required to give reassurance that the new code of practice is being followed.
61. The guiding principles and code of practice embodied in *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption* will strengthen the mechanisms for the management of change for all the listed places of worship of the exempt denominations.
62. The Welsh Government will take cognisance of the evidence gathered in this consultation in its future monitoring of the ecclesiastical exemption regime.

## List of respondents

Each entry gives the number of the consultation response, the name of the individual or organisation responding (unless anonymity has been requested) and the location of the respondent (if known).

No.	Name	Location
001	Not provided	Not provided
002	Anonymity requested	Not provided
003	Not provided	Not provided
004	Glamorgan-Gwent Archaeological Trust	Swansea
005	Dyfed Archaeological Trust	Llandeilo
006	Anonymity requested	Not provided
007	Church of England, Archbishop's Council, Cathedral and Church Buildings Division	Not provided
008	Barry Town Council	Barry
009	Mid and West Wales Conservation Officers Group	Pembroke Dock
010	Cytûn — Churches Together in Wales CLAS — Churches' Legislation Advisory Service	Cardiff London
011	Humanists UK	Not provided
012	The Representative Body of the Church In Wales	Cardiff
013	Susan J. Davies	Aberystwyth
014	Wales Heritage Group	Not provided
015	Abergele Town Council	Wales
016	Anonymity requested	Not provided
017	CLA Cymru	Merthyr Tydfil
018	Merthyr Tydfil County Borough Council	Merthyr Tydfil
019	Baptist Union of Great Britain	Not provided
020	Patrimony Committee, Catholic Bishops' Conference of England and Wales	London
021	Anonymity requested	Not provided
022	Anonymity requested	Llanelli
023	Conwy County Borough Council (Conservation)	Conwy
024	Anonymity requested	Not provided
025	Sian Rees	Not provided
026	Isle of Anglesey County Council	Llangefni
027	A. Jones	Not provided
028	Anonymity requested	Not provided
029	Bridgend County Borough	Bridgend
030	Association of Local Government Archaeological Officers: Cymru	Bangor
031	Clwyd-Powys Archaeological Trust	Welshpool
032	Llandaff DAC (and Docomomo-UK)	Cardiff
033	The Victorian Society	London
034	Gwynedd Archaeological Trust	Bangor
035	Historic Churches Committee (Wales and Herefordshire)	Cardiff
036	Society for the Protection of Ancient Buildings	London
037	Neath Port Talbot County Borough Council	Neath
038	Institute of Historic Building Conservation	Tisbury