

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE WELSH MINISTERS AND THE CADW CHIEF EXECUTIVE

Introduction

Cadw is the Welsh Government's Historic Environment Service. Cadw is a division of Welsh Government and is answerable to the relevant Minister(s) with responsibility for heritage, currently the Minister for Culture, Skills and Social Partnership and the Cabinet Secretary for Economy, Energy, and Planning.

Cadw is supported by a Board including non-executive members who advise, support, scrutinise and monitor Cadw's strategic direction, business plan and standards. The Board provides advice and guidance and is not a decision-making body.

Purpose of this memorandum

This Memorandum of Understanding (MoU) sets out the regulatory areas where Cadw is required to deploy professional independence and judgement.

Functions

On behalf of the Welsh Ministers, Cadw has several statutory responsibilities including the conservation and maintenance of, and the provision of safe public access to, monuments in state care, and provides leadership for the historic environment sector in Wales.

Cadw is responsible for overseeing the framework for the protection and sustainable management of the historic environment and undertakes or supports a range of functions arising from the Historic Environment (Wales) Act 2023. This includes identifying and designating historic assets of national importance, providing consents for scheduled monuments, overseeing the condition inspection of designated assets and providing statutory advisory services for planning applications, ecclesiastical exemptions and listed building consents. It also provides recommendations to Welsh Ministers in respect to call in of listed building consents, and manages, conserves and provides safe public access to historic sites in the care of Welsh Ministers.

Legislation

The Historic Environment (Wales) Act 2023 ("2023 Act") came into force in Wales in November 2024 and replaced the Ancient Monument and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990. A summary of the provisions of the Act is at **Annex A**.

If there is an inconsistency between any of the provisions of this document and the provisions of legislation relating to Welsh Ministers / Cadw to which this document relates, the provisions of the legislation shall prevail.

Welsh Ministers

Welsh Ministers recognise the importance of Cadw's professional independence and the judgment that they must deploy.

The legislation places a range of duties or powers on Welsh Ministers, but day to day decisions are typically taken by Cadw staff under the Carltona principle. This is a principal of administrative law where there is legal recognition of the practical necessity for staff (who remain accountable to the Welsh Minister that they serve) to exercise functions on behalf of the Welsh Minister to whom they work.

Decisions will hinge specifically on a judgement about the issue at hand and are one of balance, considering professional and specialist expertise, the pertinent legislation, relevant decision-making criteria, published technical and best-practice guidance and any representations that may have been made.

The functions below are the responsibility of the Welsh Ministers but in practice are normally undertaken by specialist teams within Cadw. The Welsh Ministers accept that relevant officers of Cadw should have the capacity, capability and specialist skills required to assess, evaluate, make decisions and provide representations in the functions included in the 2023 Act, in particular the ones listed below, without prejudicial pressure or improper constraint, using careful judgement as to whether to seek authority from the individual Welsh Minister responsible for Cadw.

For the regulatory areas below, it is agreed that Cadw staff, at a level appropriate to the function, can normally make decisions independently of Welsh Ministers.

1. Designation decisions – the 2023 Act requires the Welsh Ministers to:

- list every building in Wales that they consider to be of special architectural or historic interest.
- maintain a schedule of monuments in Wales that they consider to be of national importance.
- maintain a register of park and gardens in Wales they consider to be of special historic interest.

2. The control of works affecting scheduled monuments (chapter 3-5 and 7 of Part 2 of the 2023 Act). Including the consideration of applications for scheduled monument consent (SMCs), including historic properties in the care of the Welsh Ministers; scheduled monument partnership agreements, management agreements, enforcement controls; and damage to monuments, urgent works and powers of entry.

3. Buildings of special architectural or historic interest (section 95 and 115 of Part 3 of the 2023 Act) – in particular the powers of the Welsh Ministers to direct a planning authority that there is no requirement for them to notify the Welsh Ministers before granting listed building consent, the powers of the Welsh

Ministers to make a listed building partnership agreement and the power to direct that an application for listed building consent should be called-in for determination by the Welsh Ministers and in particular Cadw's role in recommending to the Welsh Government's Planning Division that such a direction (known as "call-in") should be made.

3. Planning functions – Local planning authorities are required to consult the Welsh Ministers, through Cadw, on certain development proposals which affect scheduled monuments, registered historic parks, gardens, registered historic landscapes and the Outstanding Universal Value of World Heritage Sites and their settings.

Cadw is also a statutory consultee on Strategic Environmental Assessment for planning authority local development plans, Environmental Impact Assessments and Development of National Significance where those may impact on historic assets or their setting.

Cadw is requested to submit representations for Marine Licencing applications and any appeal made to the Planning and Environment Decisions Wales (PEDW) under the 2023 Act or the Town and Country Planning Act 1990 if the appeal impacts a historic asset or its setting. From late 2025 Cadw will also be asked to respond to applications for Significant Infrastructure Projects submitted under the Infrastructure (Wales) Act 2024.

In undertaking this work Cadw officers use their specialist knowledge and understanding to provide objective and professionally competent advice. All Cadw staff will be subject to the Civil Service Code, and it will be the responsibility of the Cadw Chief Executive to ensure that the Code is complied with.

Media / publications related to the above regulatory areas:

Cadw and Welsh Ministers will work to the principles of "no surprises" and transparency and will seek to give each other adequate warning and sufficient information about any planned press releases and announcements to the public that the other may need to know of, where this is feasible.

The Director General of the Education, Culture and Welsh Language Group (the "Director General") through the Director for Culture, Heritage, Sport and Welsh Language is responsible for supporting the Cadw Chief Executive in respect of:

- ensuring requirements for high standards of professional judgement, and the independence necessary to form such judgements and to speak of them publicly (including in Senedd Committees), should be reflected in job descriptions and wider administrative practice.
- to report under conditions of their own editorial control.
- and likewise, to issue accompanying media statements (subject to the constraints of the Civil Service Code); on the areas detailed above.

Review

This memorandum will be regularly reviewed by the Cadw Chief Executive and any recommendations for change submitted to the Welsh Ministers for their consideration.

Agreed by

A handwritten signature in black ink that reads "JACK SARGEANT". The signature is written in a cursive style with a large initial 'J' and a long horizontal stroke at the end.

On behalf of the Welsh Ministers

Date 11/08/2025

A handwritten signature in black ink, appearing to be a stylized 'G' followed by a flourish.

On behalf of Cadw

Date 11/08/2025