

# HISTORIC ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Listed Buildings**

##### *Section 29 – Temporary stop notices*

186. **Section 29** inserts new sections 44B to 44D into the 1990 Act which make provision to allow temporary stop notices to be issued in relation to listed buildings.

##### **44B Temporary stop notices**

187. Unauthorised works often destroy the historic fabric, and can damage the special interest, of listed buildings. The 1990 Act makes it an offence to carry out unauthorised works to a listed building or fail to comply with the conditions of a listed building consent. The same Act makes provision for the service of a listed building enforcement notice to require the restoration of a listed building after unauthorised works, or steps to alleviate the effects of such works. A listed building enforcement notice cannot come into effect earlier than 28 days after its service. If an appeal is lodged against it, an enforcement notice will not take effect until the appeal has been determined or withdrawn, unless a court determines otherwise. A temporary stop notice, by contrast, can bring unauthorised works to an immediate halt, avoiding the risk of further damage to the historic fabric of the building.
188. Sections 44B to 44D provide local planning authorities with a power to serve a temporary stop notice requiring the immediate cessation of unauthorised works for a period of 28 days whilst a solution to the situation is sought.
189. A local planning authority may serve a temporary stop notice if it appears to the authority that works are being or have been carried out to a listed building without consent or in breach of a condition attached to a consent and the authority considers it expedient to stop those works immediately, in consequence of their effect on the character of the building as one of special architectural or historic interest (section 44B(1) and (2)).
190. Section 44B(3) requires the notice to be in writing and to specify the works which are to stop, explain why the notice has been issued and state that contravention of the notice is an offence. The works specified in the temporary stop notice need not include all of the works that are underway. For example, a local planning authority may wish to stop the alteration or removal of a particular feature, such as a window, which is part of a wider programme of works, but may be satisfied that the remainder of the programme of works has been authorised by listed building consent, or consists of simple repairs that will not affect the character of the building.
191. Section 44B(5) and (6) requires the local planning authority to display a copy of the temporary stop notice on the building and to specify, on the copy, the date on which it first does so. The notice takes effect as soon as the copy is first displayed on the building.

192. Section 44B(7) states that a temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 44B(8) to (10) states that a local planning authority may withdraw the notice before the end of 28 days (or any shorter period specified). A further temporary stop notice cannot be issued for the same works unless another enforcement action has been taken in relation to the contravention, for example, the service of a listed building enforcement notice or the obtaining of an injunction under section 44A of the 1990 Act. There is no requirement for a temporary stop notice to be accompanied or followed by a listed building enforcement notice or any other enforcement action.
193. Section 44B(11) allows the Welsh Ministers to make regulations that exempt the execution of certain works, or works in certain circumstances, from the effects of a temporary stop notice. This provides some flexibility for the Welsh Ministers to adapt the use of temporary stop notices in light of experience of their use.

#### **44C Temporary stop notices: offence**

194. New section 44C sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence if a notice is breached repeatedly.
195. Section 44C(3) and (4) sets out the defences to an offence under this section.
196. Section 44C(5) and (6) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. Since unauthorised works to a listed building may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

#### **44D Temporary stop notices: compensation**

197. Section 44D(1) to (3) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (2) of section 9 of the 1990 Act (offences) because listed building consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the local planning authority withdraws the temporary stop notice other than following the grant of listed building consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
198. Section 44D(4) specifies that no compensation will be payable for loss or damage that could have been avoided if the claimant had provided information required under the provisions mentioned in section 44D(5) or had otherwise cooperated with the local planning authority when responding to the temporary stop notice.
199. The provisions mentioned in section 44D(5) are section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which gives local authorities powers to obtain details of persons who have an interest in land, and section 330 of the Town and Country Planning Act 1990, which allows the local planning authority or the Welsh Ministers to require information as to interests in land.
200. [Section 29\(2\)](#) applies section 31 of the 1990 Act, which makes provision about compensation payable in respect of the depreciation of the value of an interest in land, to the compensation payable under section 44D for loss and damage attributable to a temporary stop notice.

*These notes refer to the Historic Environment (Wales) Act  
2016 (c.4) which received Royal Assent on 21 March 2016*

201. [Section 29\(3\)](#) amends section 82A(2) of the 1990 Act (Crown application) so that the provisions which deal with temporary stop notices bind the Crown, except those in section 44C which make it an offence to contravene a temporary stop notice.
202. [Section 29\(4\)](#) amends section 88 of the 1990 Act (rights of entry) to allow local planning authorities to authorise a person in writing to enter land for the purpose of displaying a temporary stop notice, ascertaining whether a notice has been complied with and considering a claim for compensation.
203. [Section 29\(5\)](#) gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation arising from the service of a temporary stop notice.
204. [Section 29\(6\)](#) amends section 88B of the 1990 Act by removing the requirement to give 24 hours' notice prior to the use of powers of entry to display a temporary stop notice or to ascertain compliance with a notice.
205. [Section 29\(7\)](#) amends Schedule 2 of the 1990 Act (lapse of building preservation notices) so that, on the lapse of a building preservation notice, any temporary stop notice which has been served on the building ceases to have effect.
206. [Section 29\(8\)](#) amends Schedule 4 of the 1990 Act (exercise of functions by different authorities). From time to time, the Welsh Ministers may require a local planning authority to submit for approval its proposed arrangements to obtain specialist advice in connection with the payment of compensation arising from the service of a temporary stop notice.