

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: General

Section 40 – Regulations and orders

240. **Section 40** makes a number of amendments to the 1979 Act and the 1990 Act in order to clarify the Welsh Ministers’ powers to make regulations and orders under those Acts and the procedures which apply to the making of those regulations and orders. The amended provision in section 60 of the 1979 Act (regulations and orders) and section 93 of the 1990 Act (regulations and orders) will apply to the making of regulations under the new provisions inserted into those Acts by this Act.
241. Subsection (2) amends section 60 of the 1979 Act. It affirms that the power of the Welsh Ministers to make regulations under the Act or an order under sections 3 (grant of scheduled monument consent), 37 (exemptions from offence under section 35) or 61 (interpretation) of the Act is exercisable by statutory instrument.
242. Subsection (2) also requires that any statutory instrument containing regulations under new sections 1AA (duty to consult on certain amendments relating to the Schedule) or 9ZB (heritage partnership agreement) of the 1979 Act must be laid in draft before, and approved by a resolution of, the National Assembly for Wales. Any statutory instrument containing regulations under the 1979 Act that amend or repeal any provision of primary legislation must also be subject to that procedure. The subsection further provides that any other statutory instruments containing regulations or orders made by the Welsh Ministers under the 1979 Act, except regulations made under section 19 of that Act (public access to monuments under public control), will be subject to annulment by a resolution of the National Assembly for Wales.
243. Subsection (3) amends subsection (1) of section 93 of the 1990 Act (regulations and orders) to make it clear that the Welsh Ministers may make regulations under that Act in relation to Wales.
244. Subsections (4) and (5) require any statutory instrument containing regulations under new sections 2A (duty to consult on certain changes to lists), 26M (heritage partnership agreements) or 56A (preservation of listed buildings in disrepair) of the 1990 Act to be laid in draft before, and approved by a resolution of, the National Assembly for Wales. Any other regulations under the Act will be subject to annulment by a resolution of the National Assembly for Wales.
245. Subsections (6) and (7) confirm that an order under section 55(5B) of the 1990 Act (interest on outstanding costs of urgent works) is to be made by statutory instrument and shall be subject to annulment by a resolution of the National Assembly for Wales.
246. Subsection (12) requires a statutory instrument containing regulations under section 35(9) (power to vary meaning of “historic environment record”) or section 39(7)(h) (Advisory Panel for Welsh Historic Environment: disqualification

*These notes refer to the Historic Environment (Wales) Act
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from membership for staff of specified organisations) to be laid in draft before, and approved by a resolution of, the National Assembly for Wales.