
WELSH STATUTORY INSTRUMENTS

2021 No. 1177 (W. 290)

TOWN AND COUNTRY PLANNING, WALES

The Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021

Made - - - - 20 October 2021

Coming into force - - 1 January 2022

The Welsh Ministers, in exercise of the powers conferred by sections 26M(3), (4) and (5) and 93(6A)(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990(2), make the following Regulations.

In accordance with section 93(3A)(3) of that Act, a draft of this instrument has been laid before and approved by resolution of Senedd Cymru.

Title and commencement

1. The title of these Regulations is the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021 and they come into force on 1 January 2022.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“draft agreement” (“*cytundeb drafft*”) means draft heritage partnership agreement;

“draft variation” (“*amrywiad drafft*”) means draft variation to a heritage partnership agreement;

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);

(1) Section 26M was inserted by section 28(1) of the Historic Environment (Wales) Act 2016 (anaw 4) (“the 2016 Act”). Section 93(6A) was inserted by paragraph 26 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5).

(2) 1990 c. 9.

(3) Section 93(3A) was inserted by section 40(5) of the 2016 Act. The reference in section 93(3A) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(4) 2000 c. 7.

“heritage partnership agreement” (“*cytundeb partneriaeth dreftadaeth*”) means an agreement made by a relevant local planning authority or the Welsh Ministers under section 26L of the 1990 Act;

“listed building” (“*adeilad rhestredig*”) has the meaning given in section 1(5) of the 1990 Act;

“listed building consent” (“*cydsyniad adeilad rhestredig*”) means consent under section 8(1) of the 1990 Act;

“local planning authority” (“*awdurdod cynllunio lleol*”) is to be interpreted in accordance with Part 1 of the Town and Country Planning Act 1990(5);

“long-term occupier” (“*meddiannydd hirdymor*”) means an occupier under a tenancy which is granted or extended for a term of years certain of which not less than two years remain unexpired;

“owner” (“*perchennog*”) in relation to a listed building or part of such a building, means a person who is for the time being—

- (a) the estate owner in respect of the fee simple in the building or part, or
- (b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than 7 years remain unexpired;

“relevant local planning authority” (“*awdurdod cynllunio lleol perthnasol*”) in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

(2) Where—

- (a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of these Regulations, and
- (b) the communication is received outside the person’s business hours by that person,

it is taken to have been received on the next working day.

Matters which must be included in heritage partnership agreement

3.—(1) A heritage partnership agreement must include—

- (a) enough information to identify the building to which the agreement relates, including a plan;
- (b) such other plans and drawings which are necessary to describe the works which are covered by the agreement;
- (c) the date from which the agreement has effect;
- (d) the duration of the agreement.

(2) See also the following sections of the 1990 Act—

- (a) section 26L(8) (other matters that may be included in a heritage partnership agreement);
- (b) section 26M(1) (making supplemental provision for heritage partnership requirements).

Consultation and publicity on draft heritage partnership agreement and draft variation: general

4.—(1) A local planning authority may not make a heritage partnership agreement unless the requirements of regulations 5 and 6 have been satisfied.

(2) A local planning authority may not vary an existing agreement so as to—

- (a) grant or vary listed building consent for works which would affect the character of a listed building as a building of special architectural or historic interest, or
 - (b) extend the duration of the agreement,
- unless the requirements of regulations 5 and 6 have been satisfied.

Consultation with the Welsh Ministers on draft heritage partnership agreement or draft variation

- 5.—(1) These are the requirements referred to in regulation 4 which relate to consultation.
- (2) A local planning authority must—
- (a) send a copy of the draft agreement or draft variation (as the case may be) to the Welsh Ministers, and
 - (b) invite representations from them within a specified period of at least 21 days beginning with the day on which the draft agreement or draft variation is received.
- (3) But the local planning authority are not required to comply with paragraph (2) if—
- (a) the Welsh Ministers are a proposed party to the draft agreement or draft variation, or
 - (b) another local planning authority has complied with paragraph (2) in relation to them and the same draft agreement or draft variation.
- (4) During the consultation period specified under paragraph (2)(b), the Welsh Ministers may give notice to the local planning authority who invited representations that they require further time in which to consider the draft agreement or draft variation.
- (5) If the Welsh Ministers give the notice specified in paragraph (4), the consultation period in paragraph 2(b) is extended for the period specified in that notice.

Publicity requirements: draft heritage partnership agreement or draft variation

- 6.—(1) These are the requirements referred to in regulation 4 which relate to publicity.
- (2) A local planning authority must—
- (a) make available for public inspection, the draft agreement or draft variation together with details of how and the date by which representations may be made—
 - (i) at a place in the locality in which the affected listed building is situated;
 - (ii) at reasonable hours;
 - (iii) for at least 21 days;
 - (b) publish on their website for at least 21 days—
 - (i) the address or location of the listed building to which the draft agreement or the draft variation relates,
 - (ii) a summary of the draft agreement or the draft variation,
 - (iii) a statement that the draft agreement or draft variation is available for public inspection at the place and times indicated,
 - (iv) details of how representations may be made, and
 - (v) the date by which representations must be received;
 - (c) display a notice including the information specified in sub-paragraph (b) for at least 21 days on or near the listed building to which the draft agreement or draft variation relates;
 - (d) give a copy of the notice to—

- (i) any long-term occupier of a listed building or part of a listed building to which the draft agreement or draft variation relates,
 - (ii) any owner of the listed building or part of it to which the draft agreement or draft variation relates who is not proposed to be a party to the draft agreement or draft variation, and
 - (iii) any person who appears to the authority appropriate as having special knowledge of, or interest in, the listed building or part of the listed building or in buildings of architectural or historic interest more generally, but this requirement does not apply where paragraph (6) applies.
- (3) But the local planning authority is not required to comply with—
- (a) paragraph (2)(c) if another local planning authority has complied with that paragraph in relation to the same draft agreement or the same draft variation;
 - (b) paragraph (2)(d) in respect of any person who is a proposed party to the draft agreement or draft variation or who has been given a notice by another local planning authority in relation to the same draft agreement or the same draft variation.
- (4) A date specified in accordance with paragraph (2) as the date by which representations must be received about a draft agreement or draft variation must be—
- (a) in relation to making the draft agreement or draft variation available for public inspection under paragraph (2)(a), at least 21 days after the date it is made available under that paragraph;
 - (b) in relation to publishing a summary of the draft agreement or draft variation on their website under paragraph (2)(b), at least 21 days after the date the summary is published;
 - (c) in relation to displaying a notice under paragraph (2)(c), at least 21 days after the date the notice is displayed;
 - (d) in relation to giving a copy of the notice under paragraph (2)(d), at least 21 days after the date the notice is given.
- (5) Where the notice referred to in paragraph (2)(c) is, without the fault of the authority that displayed it, removed, obscured or defaced before the end of the 21 day period, the authority is treated as having complied with that paragraph if they have taken reasonable steps for the protection of the notice, and, if necessary, its replacement.
- (6) Where the local planning authority is the owner of a listed building or buildings to which the draft agreement or the draft variation relates, paragraph (7) applies.
- (7) The Welsh Ministers must give a copy of the notice referred to in paragraph (2)(d)(iii) to any person who it appears to them appropriate as having special knowledge of, or interest in, the listed building or part of the listed building or in buildings of architectural or historic interest more generally, unless that person is a proposed party to the draft agreement or to the draft variation.
- (8) Nothing in this regulation or in regulation 8 requires a local planning authority to publish information—
- (a) which is a trade secret,
 - (b) if disclosure is likely to otherwise prejudice the commercial interest of any person,
 - (c) the disclosure of which would constitute a breach of confidence actionable by any person, or
 - (d) the disclosure of which is prohibited by or under any enactment or by an order of a court.

Consideration of whether to make or vary agreement

7. In considering whether to make or vary a heritage partnership agreement to grant listed building consent, the relevant local planning authority or the Welsh Ministers must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Publicity requirement: list and copies of heritage partnership agreements and variations

8. The local planning authority must—
- (a) publish a list, by electronic means, of all heritage partnership agreements that are in effect to which it is a party, and
 - (b) as soon as practicable after a heritage partnership agreement is made, or an existing agreement is varied—
 - (i) add the agreement or variation to the list, and
 - (ii) submit a copy of the agreement or variation to the Welsh Ministers.

Termination of heritage partnership agreement by the local planning authority

9.—(1) A local planning authority may, by order, terminate any heritage partnership agreement to which it is a party or any provision of such an agreement.

(2) An order made under this regulation may include supplementary, incidental, transitory, transitional or saving provision.

(3) An order made by the local planning authority under paragraph (1) does not take effect unless it is confirmed by the Welsh Ministers under regulation 11(4).

(4) An order to terminate a heritage partnership agreement may, in relation to any listed building consent granted by the agreement in respect of any works, be exercised at any time before those works have been completed, but the termination does not affect so much of those works as has been previously carried out.

Termination of heritage partnership agreement by the Welsh Ministers

10.—(1) The Welsh Ministers may, by order, terminate any heritage partnership agreement or any provision of such an agreement.

(2) An order made under this regulation may include supplementary, incidental, transitory, transitional or saving provision.

(3) An order to terminate a heritage partnership agreement may, in relation to any listed building consent granted by the agreement in respect of any works, be exercised at any time before those works have been completed, but the termination does not affect so much of those works as has been previously carried out.

Procedure for termination of heritage partnership agreement

11.—(1) Where a local planning authority have made, or the Welsh Ministers propose to make, an order terminating a heritage partnership agreement or any provision of it, the body making or proposing to make the order must serve notice on—

- (a) the parties to the agreement,
- (b) any long-term occupier of the building to which the heritage partnership agreement relates (if they are not a party to the agreement), and
- (c) any other person who in their opinion will be affected by the order.

(2) The notice must specify a period of not less than 28 days starting with the date the notice is served, within which any person on whom it is served may require an opportunity to appear before and be heard by a person appointed by the Welsh Ministers for that purpose.

(3) If within that period a person on whom the notice is served so requires, the Welsh Ministers must give such an opportunity both to that person and to any local planning authority who is party to the heritage partnership agreement before they make or confirm the order.

(4) The Welsh Ministers may confirm an order submitted to them by a local planning authority either without modification or with modifications.

Compensation where heritage partnership agreement terminated in whole or part

12.—(1) This regulation applies where a heritage partnership agreement or any provision of such an agreement is terminated by an order under regulation 9 or 10.

(2) In this regulation, references to the local planning authority are—

- (a) in the case of an order made under regulation 9, the local planning authority who made the order;
- (b) in the case of an order made under regulation 10, the local planning authority in whose area the building or any part of the building which gives rise to the expenditure, loss or damage is situated.

(3) The local planning authority must pay compensation to a person if the conditions in paragraph (4) are met.

(4) The conditions are that—

- (a) the person has incurred expenditure in carrying out works which are rendered abortive by the termination, or has otherwise sustained loss or damage which is directly attributable to the termination,
- (b) the claim is made in writing to the local planning authority, and
- (c) the claim is served within a period of 6 months beginning with the date on which the termination takes effect.

(5) Subject to paragraph (7), no compensation is payable under this regulation in respect of—

- (a) any works carried out before the agreement or relevant provision had effect, or
- (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the agreement had effect.

(6) The Welsh Ministers may, after consultation with all the local planning authorities who are or were party to the agreement, direct that where a local planning authority is liable to pay compensation under this regulation it is entitled to be reimbursed the whole of the compensation or such proportion of it as they may direct from one or more authorities specified in the direction.

(7) For the purpose of this regulation, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, are to be taken to be included in the expenditure incurred in carrying out those works.

Disapplication and modification of the 1990 Act

13.—(1) The Schedule disapplies provisions of the 1990 Act for the purposes of heritage partnership agreements and applies provisions mentioned in section 26M(5)(a) of the 1990 Act with modifications for those purposes.

(2) For the purposes of these Regulations, any reference in the 1990 Act to a provision of the Act which is applied with modifications by the Schedule is a reference to the provision as it applies by virtue of that Schedule.

20 October 2021

Dawn Bowden
Deputy Minister for Arts and Sport, and Chief
Whip under authority of the Minister for
Economy, one of the Welsh Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 13

| <i>Provision in 1990 Act</i> | <i>Disapplication or modification applied for the purposes of other provisions of these Regulations</i> |
|---|---|
| Section 18 (limit of duration of listed building consent) | Section does not apply. |
| Section 19 (application for variation or discharge of conditions) | Section does not apply. |
| Section 31 (general provisions as to compensation for depreciation) | Section 31 applies as if references to section 28 were references to regulation 12 of these Regulations. |
| Section 62 (validity of certain orders and decisions) | Section 62 applies as if in subsection (1)(a)— <ul style="list-style-type: none"> (a) the reference to section 23 were a reference to regulation 9 of these Regulations, and (b) the reference to section 26 were a reference to regulation 10 of these Regulations. |
| Section 63 (proceedings for questioning validity of other orders, decisions and directions) | Section 63 applies as if in subsection (3A), for paragraphs (a) and (b) there were substituted— <ul style="list-style-type: none"> “(a) in the case of an application relating to an order under regulation 9 of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, the date on which the order is confirmed; (b) in the case of an application relating to an order under regulation 10 of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, the date on which the order is made;”. |
| Section 86 (ecclesiastical property) | Section 86 applies as if in subsection (3), the reference to section 29 were a reference to regulation 12 of these Regulations. |
| Section 88 (rights of entry) | Section 88 applies as if— <ul style="list-style-type: none"> (a) in subsection (2)(a), references to the following sections of the 1990 Act were to the following regulations of these Regulations— <ul style="list-style-type: none"> (i) section 23 – to regulation 9; (ii) section 26 – to regulation 10, and (b) in subsection (4), the reference to section 28 were a reference to regulation 12 of these Regulations. |
| Section 90 (financial provisions) | Section 90 applies as if references to the following sections are references to the following regulations in these Regulations— <ul style="list-style-type: none"> (a) section 16(2) – to regulation 7, (b) section 24 – to regulation 11, (c) section 26 – to regulation 10, and (d) section 28 – to regulation 12. |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers given to the Welsh Ministers by the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (“the 1990 Act”). They make provision about heritage partnership agreements relating to listed buildings in Wales.

The 1990 Act protects buildings of special architectural or historic interest, which may include buildings, structures or erections. The 1990 Act provides that the Welsh Ministers must compile a list of such buildings in Wales. Particular types of works may only be carried out to a “listed building” if they are authorised by the local planning authority or by the Welsh Ministers. This authorisation is called “listed building consent” and is granted under Part 1 of the 1990 Act.

The Historic Environment (Wales) Act 2016 (anaw 4) amended the 1990 Act to introduce a “heritage partnership agreement”. This is an agreement between the owner of a listed building in Wales and either the local planning authority or the Welsh Ministers or both. There may also be additional parties to a heritage partnership agreement, including any person who has special knowledge of or interest in the listed building, generally or specifically. Section 26M(2) of the 1990 Act provides that heritage partnership agreements may relate to more than one listed building provided that either the relevant local planning authority or the Welsh Ministers are party to it together with an owner of the building or part of the building.

A heritage partnership agreement may grant listed building consent under section 8(1) of the 1990 Act in respect of specified works for the alteration or extension of the listed building to which the agreement relates. That consent may be subject to conditions.

Section 26M(3) of the 1990 Act requires the Welsh Ministers to make Regulations to make further provision about certain aspects of the content of heritage partnership agreements and the procedures for agreeing and terminating agreements.

Regulation 3 sets out matters which must be included in a heritage partnership agreement. They include things such as enough information to identify the building to which the agreement relates and the duration of the agreement.

Regulations 4 to 6 make provision about consultation and publicity requirements in certain circumstances. Those circumstances are where they grant or vary listed building consent for works which would affect the character of a listed building as a building of special architectural or historic interest or where they extend the duration of an agreement.

Regulation 5 provides that the local planning authority must consult with the Welsh Ministers before they make or vary a heritage partnership agreement.

Regulation 6 requires a local planning authority to publicise draft heritage partnership agreements or draft variations to agreements in a number of ways. Those include drawing it to the attention of any owner and long-term occupier who is not a proposed party to the agreement or variation and making the proposed agreement or variation available for public inspection and on a website for a specified number of days. Notice of the proposed agreement or variation must be displayed near the building and served on certain interested parties. A minimum of 21 days must be allowed for representations to be made.

Regulation 7 requires the local planning authority or the Welsh Ministers to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest in considering whether to make or vary an agreement.

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Regulation 8 provides that the local planning authority must publish a list of the heritage partnership agreements to which it is a party which are in effect and must, as soon as practicable after making a heritage partnership agreement or variation, include reference to the agreement or variation in a list, published by electronic means, and submit a copy to the Welsh Ministers.

Regulations 9 and 10 provide for local planning authorities or the Welsh Ministers, by order to terminate a heritage partnership agreement or any provision of such an agreement, without the agreement of the other parties to the agreement. Any order made by a local planning authority must be confirmed by the Welsh Ministers before it can take effect.

Regulation 11 provides for a procedure for exercising those powers of termination; that the local planning authority or the Welsh Ministers, as the case may be, may only do so where they serve notice of their intentions on interested parties. Those parties have 28 days within which to require the opportunity of being heard by the Welsh Ministers.

Regulation 12 provides for the compensation that the local planning authority may be required to pay after a heritage partnership agreement is terminated. If a person has incurred specified expenditure or has otherwise sustained loss or damage as a result of the termination, the local planning authority may be required to compensate that person.

Regulation 13 provides that the provisions of the 1990 Act listed in the Schedule are disapplied or modified for the purposes of heritage partnership agreements.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Cadw, Welsh Government, Tŷ'r Afon, Bedwas Road, Caerphilly, CF83 8WT and from the Welsh Government's website at www.gov.wales.