



# Historic Environment (Wales) Act 2016

2016 anaw 4

An Act of the National Assembly for Wales to make provision amending certain aspects of the law relating to ancient monuments and listed buildings; to establish a register of historic parks and gardens and a list of historic place names; to establish historic environment records for local authority areas; to establish an Advisory Panel for the Welsh Historic Environment; and for connected purposes. [21 March 2016]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### OVERVIEW

#### 1 Overview

- (1) This Act has five Parts.
- (2) This Part provides an overview of this Act.
- (3) Part 2 makes amendments to the Ancient Monuments and Archaeological Areas Act 1979 (c.46), primarily in relation to ancient monuments in Wales. It also makes provision for the Welsh Ministers to compile and maintain a register of historic parks and gardens.
- (4) Part 3 makes amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) in relation to buildings in Wales that are of special architectural or historic interest (“listed buildings”).
- (5) Part 4 makes other provision about the historic environment in Wales, including provision—
  - (a) for the compilation of a list of historic place names in Wales (section 34),
  - (b) for the compilation of a historic environment record for each local authority area in Wales (sections 35 to 37), and

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- (c) for the establishment, constitution and functions of the Advisory Panel for the Welsh Historic Environment (sections 38 and 39).
- (6) Part 5 contains provision that applies generally for the purposes of this Act.

## PART 2

### ANCIENT MONUMENTS ETC

#### *Overview*

## 2 Overview of this Part

- (1) This Part is primarily about the protection of ancient monuments in Wales. It makes provision—
- (a) for the Welsh Ministers to consult before making certain changes to the Schedule under the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (“the 1979 Act”) or certain amendments relating to monuments in the Schedule (section 3);
  - (b) to give a monument statutory protection while the Welsh Ministers decide whether to include it in the Schedule or, in the case of a monument already included in the Schedule, to make certain amendments relating to it (section 3);
  - (c) for the Welsh Ministers to review a decision of theirs to include a monument in the Schedule or to make certain amendments relating to a monument in the Schedule (section 3);
  - (d) to amend the procedure relating to scheduled monument consent and the provision for compensation for the refusal of such consent (sections 5 to 10);
  - (e) for the Welsh Ministers to enter into an agreement with the owner of a monument included in the Schedule about matters such as consent for works to the monument (section 11);
  - (f) for the Welsh Ministers to issue an enforcement notice or a temporary stop notice, or to apply to court for an injunction, in a case involving certain works to a monument included in the Schedule (sections 12 to 14);
  - (g) to modify the application of certain offences, including by the creation of a due diligence defence (sections 15 to 17);
  - (h) about the power to enter land believed to contain an ancient monument (section 19);
  - (i) about the circumstances in which a monument in the territorial sea is to be treated as being situated in Wales (section 20);
  - (j) to enable notices and other documents required or authorised to be served under the 1979 Act to be served by electronic communication (section 21);
  - (k) to amend the definition of “monument” in the 1979 Act (section 22).
- (2) This Part also makes provision for the Welsh Ministers to compile and maintain a register of historic parks and gardens (section 18).

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### *Schedule of monuments*

## **3 Amendments relating to the Schedule**

- (1) After section 1A of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) insert—

### **“1AA Duty to consult on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers are proposing—
- (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
- (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
- (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument;
  - (c) each local authority in whose area the monument is situated; and
  - (d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.
- (4) A notice under subsection (2) must—
- (a) specify the proposed inclusion, exclusion or amendment;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and
  - (c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—
    - (i) include a statement of the effect of section 1AB; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—
- (a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or
  - (b) reduces the area so shown.
- (6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to

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this Act as they consider appropriate in consequence of the amendment to subsection (3).

### **1AB Interim protection pending decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5) (a) in relation to a monument in the Schedule.
- (2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—
  - (a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and
  - (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
  - (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
  - (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect; and

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- (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

### **1AC Provisions applicable on lapse of interim protection**

Schedule A1 has effect with respect to the lapse of interim protection.

### **1AD Compensation for loss or damage caused by interim protection**

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

### **1AE Review of decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
  - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
  - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
  - (a) carry out the review requested;
  - (b) make a decision on the review; and
  - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—

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- (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers must by regulations make provision about—
- (a) the grounds on which an application for a review under this section may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with such an application;
  - (c) the form and manner in which such an application must be made; and
  - (d) the period within which such an application must be made.
- (7) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about costs that may be required to be paid in connection with a review.
- (8) Regulations made by virtue of subsection (6) or (7) may confer power on the Welsh Ministers—
- (a) to determine matters of a description specified in the regulations; and
  - (b) to give directions in relation to those matters.
- (9) Schedule A2 applies to reviews under this section.”
- (2) In section 2 of that Act (control of works affecting scheduled monuments), after subsection (6) insert—
- “(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument)—
- (a) it is a defence for the accused to prove that the accused did not know, and could not reasonably have been expected to know, that the interim protection had been conferred; and
  - (b) where the defence is raised by a person on whom a notice should have been served under section 1AA(2), it is for the prosecution to prove that the notice was served on the person.”
- (3) Before Schedule 1 to that Act insert the Schedules A1 and A2 set out in Schedule 1 to this Act.

#### Commencement Information

**II** S. 3 in force at Royal Assent for specified purposes, see s. 41(1)(c)

VALID FROM 31/05/2017

#### 4 Amendments relating to the Schedule: consequential provision

- (1) In section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (schedule of monuments), after subsection (5) insert—

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“(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.”

(2) After subsection (6A) of that section insert—

“(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.”

(3) In section 27 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), for “section 7 or 9” substitute “section 1AD, 7, 9”.

(4) In section 51 of that Act (ecclesiastical property), in subsection (3), after “under section” insert “ 1AD, ”.

(5) In section 55 of that Act (proceedings for questioning validity of certain orders, etc), after subsection (3) insert—

“(3A) This section applies to a decision on a review under section 1AE (review by Welsh Ministers or appointed person).”

(6) In section 61 of that Act (interpretation), in subsection (1), insert at the appropriate place—

““interim protection” has the meaning given by section 1AB(3);”.

### *Scheduled monument consent*

## **5 Simplification of process**

(1) In section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments), after subsection (5) insert—

“(5A) In the case of a monument situated in Wales, the reference in subsection (3) (a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers.

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.”

(2) In Part 1 of Schedule 1 to that Act (applications for scheduled monument consent), at the end of paragraph 1 insert—

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“(3) The Welsh Ministers may by regulations make provision as to cases in which an applicant for scheduled monument consent in relation to a monument situated in Wales may make the application otherwise than in the form provided for under sub-paragraph (1); and such provision may confer a discretion on the Welsh Ministers.”

#### Commencement Information

**I2** S. 5 in force at Royal Assent for specified purposes, see s. 41(1)(c)

### 6 Grant of consent for unauthorised works

(1) In section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments), after subsection (3) insert—

“(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).”

(2) In section 61(1) of that Act (interpretation), in the definition of “scheduled monument”, after “section 2(3)” insert “ and (3B) ”.

### 7 Offence of false information on application

In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), in paragraph 2(4), after “the requirements of this paragraph” insert “ or of regulations made by the Welsh Ministers under it ”.

### 8 Refusal of repeat applications etc

In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), after paragraph 2A insert—

“2B (1) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if—

- (a) within the period of 2 years ending with the date on which the application is received, the Welsh Ministers have refused a similar application; and
- (b) in their opinion, there has been no significant change in any material considerations since the similar application was refused.

(2) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.



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- (3) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the works to which the applications relate are, in the Welsh Ministers' opinion, the same or substantially the same.”

## 9 Procedure for determining applications

- (1) In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), in paragraph 3, after sub-paragraph (4) insert—

“(5) This paragraph does not apply to applications for scheduled monument consent in respect of works to a scheduled monument situated in Wales.”

- (2) After paragraph 3 of that Schedule insert—

“3A (1) This paragraph applies to applications for scheduled monument consent in respect of works to a scheduled monument situated in Wales.

(2) The Welsh Ministers may grant scheduled monument consent in respect of all or any part of the works to which an application relates.

(3) Before determining whether or not to grant scheduled monument consent on an application, the Welsh Ministers may—

- (a) cause a public local inquiry to be held; or
- (b) afford to the applicant, and to any other person to whom it appears to the Welsh Ministers expedient to do so—
  - (i) an opportunity to appear before and be heard by a person appointed by the Welsh Ministers for that purpose; or
  - (ii) an opportunity to make representations to a person appointed by the Welsh Ministers for that purpose.

(4) Before determining whether or not to grant scheduled monument consent on an application, the Welsh Ministers—

- (a) must, in every case, consider any representations made by any person with respect to that application; and
- (b) must also, if an inquiry or hearing has been held or representations have been made in accordance with sub-paragraph (3), consider the report of the person who held the inquiry or hearing or to whom the representations were made.

(5) The Welsh Ministers must serve notice of their decision with respect to the application on the applicant and on every person who has made representations with respect to the application.”

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PROSPECTIVE

## 10 Compensation for refusal of scheduled monument consent

- (1) In section 7 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46), in subsection (4), at the beginning insert “ In the case of a monument situated in England, ”.
- (2) After that subsection insert—
  - “(4A) In the case of a monument situated in Wales, a person is not entitled to compensation under this section by virtue of subsection (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for purposes specified by the Welsh Ministers by regulations.”

*Agreements relating to scheduled monuments*

## 11 Heritage partnership agreements

- (1) After section 9 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) insert—

*“Agreements concerning scheduled monuments etc: Wales*

### **9ZA Heritage partnership agreement**

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
  - (a) a scheduled monument situated in Wales; or
  - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
  - (a) any occupier of the scheduled monument or its associated land;
  - (b) any person with an interest in the scheduled monument or its associated land;
  - (c) any person involved in the management of the scheduled monument or its associated land;
  - (d) any local authority in whose area the scheduled monument or its associated land is situated;
  - (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
  - (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.

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- (3) A heritage partnership agreement may contain provision—
- (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
  - (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (4) A heritage partnership agreement may also—
- (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
  - (b) make provision about the maintenance and preservation of the scheduled monument or its associated land;
  - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
  - (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
  - (e) restrict access to, or use of, the scheduled monument or its associated land;
  - (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
  - (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on specified terms—
    - (i) for, or towards, the cost of any works provided for under the agreement; or
    - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (5) In this section “specified” means specified or described in the heritage partnership agreement.
- (6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—
- (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
  - (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.
- (7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

### **9ZB Heritage partnership agreement: supplemental**

- (1) A heritage partnership agreement—
- (a) must be in writing;

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- (b) must make provision for the parties to review its terms at intervals specified in the agreement;
  - (c) must make provision for its termination and variation; and
  - (d) may contain incidental and consequential provision.
- (2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—
  - (a) the Welsh Ministers; and
  - (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.
- (3) The Welsh Ministers must by regulations make provision—
  - (a) about the consultation that must take place before a heritage partnership agreement is made or varied;
  - (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
  - (c) specifying terms that must be included in a heritage partnership agreement; and
  - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement.
- (4) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(a)—
  - (a) the owner of the scheduled monument to which the proposed agreement relates;
  - (b) any occupier of the scheduled monument;
  - (c) any local authority in whose area the scheduled monument is situated;
  - (d) any local authority which is a guardian of the scheduled monument.
- (5) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(b)—
  - (a) the owner of the land to which the proposed agreement relates;
  - (b) any occupier of the land;
  - (c) any local authority in whose area the land is situated;
  - (d) any local authority which is a guardian of the land by virtue of this Act.
- (6) Regulations made under section (3)(d) may specify provision that may be included in an order made by virtue of that paragraph, including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision.
- (7) The Welsh Ministers may by regulations make provision disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.
- (8) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and,

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accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).”

- (2) In section 61 of that Act (interpretation)—
- (a) in subsection (1), in the definition of “owner”, after “(except for the purposes of” insert “ sections 9ZA and 9ZB and ”;
  - (b) in subsection (6), after “In this Act” insert “ (other than in section 9ZA) ”.

#### Commencement Information

**I3** S. 11 in force at Royal Assent for specified purposes, see s. 41(1)(c)

#### *Scheduled monuments: enforcement*

## 12 Enforcement notices

- (1) In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZB (inserted by section 11) insert—

#### *“Scheduled monument enforcement notices*

##### **9ZC Scheduled monument enforcement notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
- (a) the date on which the notice takes effect (see subsection (4));
  - (b) the alleged contravention;
  - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and
  - (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
- (a) steps for restoring the monument or land to its former state;

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- (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
  - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

#### **9ZD Scheduled monument enforcement notice: supplementary provision**

- (1) A copy of a scheduled monument enforcement notice must be served on—
- (a) the owner of the monument or land concerned;
  - (b) if the owner is not the occupier, the occupier;
  - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
  - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.
- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and
  - (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

#### **9ZE Scheduled monument enforcement notice: appeal**

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.

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- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
  - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
  - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
  - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
    - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
    - (ii) the works carried out were limited to the minimum measures immediately necessary; and
    - (iii) written notice justifying in detail the need for the works was given to the Welsh Ministers as soon as reasonably practicable;
  - (d) that a copy of the notice was not served as required by section 9ZD;
  - (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

#### **9ZF Scheduled monument enforcement notice: power of entry**

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—
  - (a) ascertaining whether a scheduled monument enforcement notice should be served;
  - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
  - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.
- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
  - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
  - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.

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- (3) The liability under subsection (2)(b) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that entitlement.
- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

### **9ZG Failure to comply with scheduled monument enforcement notice**

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
  - (a) the works specified as being required to cease have not ceased; or
  - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
  - (a) in a case concerning works required to cease, the works did cease; or
  - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (8) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the execution of the works to which the scheduled monument enforcement notice relates.

### **9ZH Effect of scheduled monument consent on notice**

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
  - (a) for the retention of any work to which the notice relates; or



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- (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.
- (2) The notice ceases to have effect in so far as it—
- (a) requires the work or works to cease;
  - (b) requires steps to be taken involving the works not being retained; or
  - (c) requires steps to be taken for complying with that condition.”
- (2) In section 46 of that Act (compensation for damage caused by exercise of certain powers), in subsection (3), after “section 6, 6A,” insert “ 9ZF, ”.

### 13 Temporary stop notices

- (1) In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZH (inserted by section 12) insert—

*“Scheduled monuments: temporary stop notices*

#### **9ZI Temporary stop notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
- (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the Welsh Ministers' reasons for issuing the notice; and
  - (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
- (a) to be carrying out the works or causing them to be carried out; or
  - (b) to have an interest in the monument or land.
- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable); and the copy must specify the date on which it is first displayed.
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—

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- (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

#### **9ZJ Temporary stop notice: power of entry**

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);
- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

#### **9ZK Temporary stop notice: offence**

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
- (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
- (a) that the works were urgently necessary in the interests of safety or health; and
  - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

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- (6) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

### **9ZL Temporary stop notice: compensation**

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.
- (2) But subsection (1) applies only if—
- (a) the works specified in the notice do not contravene section 2(1) or (6); or
  - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under section 57, and
  - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.”
- (2) In section 27 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), after “section 1AD, 7, 9” (inserted by section 4) insert “ or 9ZL ”.
- (3) In section 44 of that Act (supplementary provisions with respect to powers of entry), in subsection (2), at the end insert—
- “, or in relation to the power of entry under section 9ZJ of this Act where it is exercised for any of the purposes mentioned in paragraphs (a) to (c) of that section.”
- (4) In section 46 of that Act (compensation for damage caused by exercise of certain powers), in subsection (3), after “9ZF,” (inserted by section 12) insert “ 9ZJ, ”.
- (5) In section 51 of that Act (ecclesiastical property), in subsection (3), after “1AD,” (inserted by section 4) insert “ 9ZL, ”.

## **14 Injunctions**

In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZL (inserted by section 13) insert—

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*“Scheduled monuments: injunctions*

**9ZM Injunctions**

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
- (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.”

*Modifications relating to offences*

**15 Control of works affecting scheduled monuments**

- (1) Section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments) is amended as follows.
- (2) In subsection (8), after “works within subsection (2)(a) or (c) above” insert “ which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument ”.
- (3) After that subsection insert—
  - “(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused?—
    - (a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and
    - (b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.”

**16 Damaging certain ancient monuments**

- (1) Section 28 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (offence of damaging certain ancient monuments) is amended as follows.
- (2) In subsection (1), after “any protected monument” insert “ situated in England ”.
- (3) After that subsection insert—
  - “(1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—

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- (a) knew or ought reasonably to have known that it was a protected monument; and
- (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.”

## 17 Restrictions on use of metal detectors

- (1) Section 42 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (restrictions on use of metal detectors) is amended as follows.
- (2) In subsection (7), after “an offence under subsection (1) or (3) above” insert “ relating to a protected place situated in England ”.
- (3) After that subsection insert—
  - “(8) In proceedings for an offence under subsection (1) or (3) relating to a protected place situated in Wales, it is a defence for the accused to prove that the accused—
    - (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place; and
    - (b) did not know, and had no reason to believe, that the place was a protected place.”

VALID FROM 01/02/2022

### *Historic parks and gardens*

## 18 Register of historic parks and gardens

- (1) At the beginning of Part 3 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (miscellaneous provisions) insert—

*“Register of historic parks and gardens in Wales*

### 41A Register of historic parks and gardens in Wales

- (1) The Welsh Ministers must compile and maintain a register (to be known as “the register of historic parks and gardens”) of such of the following grounds in Wales as appear to them to be of special historic interest—
  - (a) parks;
  - (b) gardens;
  - (c) designed ornamental landscapes;
  - (d) places of recreation;
  - (e) other designed grounds.
- (2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of grounds of a description referred to in subsection (1)—
  - (a) any building or water on, or adjacent or contiguous to, those grounds; or

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- (b) any land adjacent or contiguous to those grounds.
- (3) For the purpose of maintaining the register, the Welsh Ministers may from time to time modify it by—
  - (a) adding an entry;
  - (b) removing an entry; or
  - (c) amending an entry.
- (4) As soon as reasonably practicable after including grounds in the register or modifying the register, the Welsh Ministers must inform—
  - (a) the owner of the grounds in question;
  - (b) if the owner is not the occupier, the occupier; and
  - (c) each local authority or National Park authority in whose area the grounds are situated.
- (5) Where the Welsh Ministers include grounds in the register or modify the register under subsection (3)(a) or (c), the duty to inform under subsection (4) also includes a duty to send each of the persons concerned a copy of the entry or modified entry (as the case may be).
- (6) The Welsh Ministers must publish the up-to-date register in such manner as they think appropriate.”
- (2) In section 50 of that Act (application of Act to Crown land), after subsection (3) insert—
  - “(3A) Crown land may be included in the register of historic parks and gardens (see section 41A).”

### *Miscellaneous*

#### **19 Land believed to contain an ancient monument: power of entry**

In section 26 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (power of entry on land believed to contain ancient monument), at the end insert—

“(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.”

#### **20 Monuments in territorial waters**

(1) In section 53 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (monuments in territorial waters), in subsection (2), after “shall describe the monument as lying off the coast of England, or of Scotland, or of Wales; and” insert “, subject to subsection (2B),”.

(2) After subsection (2) of that section insert—

“(2A) The functions under this Act conferred on the Welsh Ministers by the Historic Environment (Wales) Act 2016 (as well as those already transferred to them)

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are exercisable in relation to Wales within the meaning of the Government of Wales Act 2006 (which includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of that Act)).

(2B) Accordingly, a monument is not to be treated by virtue of section 53(2) as being in Wales unless it is situated in Wales within the meaning of section 158(1) of the Government of Wales Act 2006.”

## 21 Service of documents by electronic communication

(1) In section 56 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (service of documents), in subsection (1), after paragraph (c) insert—

“(ca) in a case where—

(i) the notice or other document relates to a monument situated in Wales or land in Wales; and

(ii) an address for service using electronic communications has been given by that person,

by sending it using an electronic communication, in accordance with the condition set out in subsection (1A); or”.

(2) After subsection (1) of that section insert—

“(1A) The condition mentioned in subsection (1)(ca) is that the notice or document must be—

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference; and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.”

(3) After subsection (2) of that section insert—

“(3) In this section, “Wales” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) of that Act).”

(4) In section 61 of that Act (interpretation), in subsection (1), insert at the appropriate place?—

““address”, in relation to electronic communications, means a number or address used for the purposes of such communications;”;

““electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.

(5) After subsection (2A) of that section insert—

“(2B) 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 this Act; and

(b) the communication is received by that person outside that person's business hours,

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it is to be treated as having been received on the next working day; and in this subsection “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.”

## 22 Meaning of “monument” in the Ancient Monuments and Archaeological Areas Act 1979

(1) Section 61 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (interpretation) is amended as follows.

(2) In subsection (7)—

- (a) omit the “and” after paragraph (b);
- (b) after paragraph (c) insert “and
- (d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity;”.

(3) After subsection (7) insert—

“(7A) In subsection (7)(d) “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006.”

## PART 3

### LISTED BUILDINGS

#### Overview

## 23 Overview of this Part

This Part is about the protection of buildings in Wales that are of special architectural or historic interest. It makes provision—

- (a) for the Welsh Ministers to consult before including a building in, or excluding a building from, a list of buildings under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (“the 1990 Act”) (section 24);
- (b) to give a building statutory protection while the Welsh Ministers decide whether to include it in a list (section 24);
- (c) for the Welsh Ministers to review a decision of theirs to include a building in a list (section 24);
- (d) for the modification of the temporary listing arrangements that are initiated by the service of a building preservation notice in light of the provision mentioned in paragraphs (a) and (b) (section 25);
- (e) for the Welsh Ministers to certify that they do not intend to include a particular building in a list (section 27);
- (f) for a local planning authority or the Welsh Ministers to enter into an agreement with the owner of a listed building about matters such as consent for works to the building (section 28);
- (g) for a local planning authority to issue a temporary stop notice in a case involving certain works to a listed building (section 29);



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- (h) to extend the scope of the urgent works that may be carried out by a local planning authority under the 1990 Act and to provide for the authority's costs in carrying out those works to be recoverable as a local land charge (section 30);
- (i) to enable the Welsh Ministers to make regulations about further steps that may be taken to secure the proper preservation of listed buildings in Wales which have fallen into disrepair (section 31);
- (j) to enable certain notices and other documents relating to listed buildings to be served by electronic communication (section 32);
- (k) in relation to the determination of certain appeals relating to listed buildings by persons appointed by the Welsh Ministers (section 33).

#### *Listing of buildings of special architectural or historic interest*

## **24 Amendments relating to the listing of buildings**

- (1) After section 2 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) insert—

### **“2A Duty to consult on certain changes to lists**

- (1) This section applies where the Welsh Ministers are proposing to—
- (a) include a building in a list compiled or approved under section 1; or
  - (b) exclude a building from such a list.
- (2) The Welsh Ministers must—
- (a) serve a notice of the proposed inclusion or exclusion on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
- (a) the owner and occupier of the building;
  - (b) the local planning authority in whose area the building is situated; and
  - (c) such other persons or bodies of persons as appear to the Welsh Ministers appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.
- (4) A notice under subsection (2) must—
- (a) specify the proposed inclusion or exclusion;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the date on which the notice is served; and
  - (c) in the case of a proposed inclusion—
    - (i) include a statement of the effect of section 2B; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to

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this Act as they consider appropriate in consequence of the amendment to subsection (3).

## **2B Interim protection pending certain listing decisions**

- (1) This section applies where the Welsh Ministers consult under section 2A on a proposal to include a building in a list compiled or approved under section 1.
- (2) The provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building, from the beginning of the day specified in the notice for the purposes of section 2A(4)(c)(ii), as if the building were a listed building.
- (3) The protection conferred upon a building by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2) ceases to have effect—
  - (a) where the Welsh Ministers include the building in a list compiled or approved under section 1, from the beginning of the day specified in the notice for the purposes of section 2D(2)(b); and
  - (b) where the Welsh Ministers decide not to include the building in such a list, from the beginning of the day specified in a notice issued to—
    - (i) the owner and occupier of the building; and
    - (ii) the local planning authority in whose area the building is situated.
- (5) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each building in relation to which interim protection has effect; and
  - (b) must, on request, provide a copy of the notice served under section 2A(2) in respect of such a building.

## **2C Provisions applicable on lapse of interim protection**

Schedule 1A has effect as respects the lapse of interim protection.

## **2D Review of certain listing decisions**

- (1) This section applies where the Welsh Ministers include a building in a list compiled or approved under section 1.
- (2) As soon as possible after amending the list to include the building, the Welsh Ministers must serve on the owner and occupier of the building a notice which—
  - (a) states that the Welsh Ministers have included the building in the list;
  - (b) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 2B(2) ceased to have effect); and
  - (c) states that the owner or occupier may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where an owner or occupier of the building makes such an application, the Welsh Ministers must—

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- (a) carry out the review requested;
    - (b) make a decision on the review; and
    - (c) make such amendment to the list as they consider appropriate to give effect to that decision.
  - (4) Except as provided in sections 62 and 63, the validity of a decision of the Welsh Ministers on the review is not to be questioned in any legal proceedings.
  - (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
    - (a) by means of a local inquiry;
    - (b) by means of a hearing;
    - (c) on the basis of written representations.
  - (6) The Welsh Ministers must by regulations make provision about—
    - (a) the grounds on which an application for a review under this section may be made;
    - (b) the form and manner in which such an application must be made;
    - (c) the information that must be provided to, or may be required by, the Welsh Ministers in connection with such an application; and
    - (d) the period within which such an application must be made.
  - (7) The Welsh Ministers may by regulations make further provision in connection with reviews under this section.
  - (8) Schedule 1B applies to reviews under this section.”
- (2) In section 9 of that Act (offences), after subsection (3) insert—
- “(3A) In proceedings for an offence under this section in relation to a building on which interim protection is conferred (which is, as a result of section 2B(2), treated as a listed building)—
- (a) it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building; and
  - (b) where the defence is raised by a person on whom a notice should have been served under section 2A(2), it is for the prosecution to prove that the notice was served on that person.”
- (3) After section 28A of that Act insert—

**“28B Compensation for loss or damage caused by interim protection**

- (1) This section applies where interim protection in respect of a building ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 2B(4)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the building is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.

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- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the interim protection having effect.”
- (4) After Schedule 1 to that Act insert the Schedules 1A and 1B set out in Schedule 2 to this Act.

#### Commencement Information

**I4** S. 24 in force at Royal Assent for specified purposes, see s. 41(1)(e)

VALID FROM 31/05/2017

#### 25 Amendments relating to the temporary listing of buildings

- (1) In section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (temporary listing: building preservation notices), in the opening words of subsection (1), for the words from the beginning to “county planning authority,” substitute “ If it appears to a local planning authority in England who are not a county planning authority ”.
- (2) In the heading to that section, after “listing” insert “ in England ”.
- (3) After that section insert—

##### “3A Temporary listing in Wales: building preservation notices

- (1) If it appears to a local planning authority in Wales that a building in their area which is not a listed building (and which is not treated as such by virtue of section 2B(2))—
- (a) is of special architectural or historic interest; and
  - (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,
- they may serve a notice on the owner and occupier of the building (in this Act referred to as a “building preservation notice”).
- (2) A building preservation notice under this section must—
- (a) state that the building appears to them to be of special architectural or historic interest and that they have requested the Welsh Ministers to consider including it in a list compiled or approved under section 1; and
  - (b) explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice under this section—
- (a) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
  - (b) subject to subsection (4), remains in force for six months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice under this section ceases to be in force—

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- (a) if interim protection under section 2B(2) takes effect in relation to the building; or
  - (b) if the Welsh Ministers notify the local planning authority in writing that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or approved under section 1.
- (5) While a building preservation notice under this section is in force with respect to a building, the provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building as if it were a listed building.
- (6) If, following the service of a building preservation notice under this section, interim protection under section 2B(2) takes effect in relation to the building, anything done by virtue of subsection (5) is to be treated as having been done by virtue of section 2B(2).
- (7) If, following the service of a building preservation notice under this section, the Welsh Ministers notify the local planning authority that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or maintained under section 1, the authority must immediately give notice of that decision to the owner and occupier of the building.
- (8) Where such a notification is given by the Welsh Ministers, no further building preservation notice in respect of the building may be served by the local planning authority within the period of 12 months beginning with the date of the notification.”
- (4) In section 28B of that Act (compensation for loss or damage caused by interim protection) (inserted by section 24), at the end insert—
  - “(4) Subsection (5) applies where—
    - (a) a building preservation notice was in force in respect of the building before interim protection took effect; and
    - (b) the notice ceased to be in force by virtue of section 3A(4)(a).
  - (5) In such a case—
    - (a) the reference in subsection (2) to the time when the interim protection took effect is to be treated as a reference to the time when the building preservation notice came into force;
    - (b) the reference in that subsection to loss or damage directly attributable to the effect of the interim protection is to be treated as including a reference to loss or damage directly attributable to the effect of the building preservation notice being in force; and
    - (c) the reference in subsection (3) to the necessity of discontinuing or countermanding works on account of the interim protection having effect is to be treated as including a reference to the necessity of discontinuing or countermanding works on account of the building preservation notice being in force.”
- (5) In section 29 of that Act (compensation for loss or damage caused by service of building preservation notice)—
  - (a) in subsection (1), after “a building preservation notice” insert “ in respect of a building situated in England ”, and
  - (b) after that subsection insert—

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“(1A) This section also applies where a building preservation notice in respect of a building situated in Wales ceases to have effect by virtue of section 3A(3)(b) or (4)(b).”

- (6) In Schedule 2 to that Act (lapse of building preservation notice), in paragraph 1—
- (a) omit the “or” after paragraph (a), and
  - (b) after paragraph (b) insert—
    - “(c) the expiry of the six month period mentioned in subsection (3)(b) of section 3A; or
    - (d) the service of a notification by the Welsh Ministers under subsection (4)(b) of that section.”

VALID FROM 31/05/2017

## 26 Amendments relating to the listing of buildings: consequential provision

- (1) In section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (listing of buildings of special architectural or historic interest)—
- (a) in subsection (4)—
    - (i) in the opening words, after “any list under this section” insert “ in relation to buildings which are situated in England ”, and
    - (ii) in paragraph (a), omit “in relation to buildings which are situated in England,”, and
  - (b) after subsection (4) insert—
 

“(4A) Section 2A makes provision about consultation on amendments of any list under this section to include or exclude a building which is situated in Wales.”
- (2) In section 2 of that Act (publication of lists), in subsection (3)—
- (a) in the opening words—
    - (i) after “any building”, in the first place it occurs, insert “ situated in England ”, and
    - (ii) for “any building”, in the second place it occurs, substitute “ any such building ”, and
  - (b) in paragraph (a), omit “, Welsh county, county borough,”.
- (3) In that section, after subsection (3) insert—
- “(3A) As soon as possible after amending a list under section 1 to include or exclude a building which is situated in Wales, the Welsh Ministers—
- (a) must inform the local planning authority in whose area the building is situated of its inclusion or exclusion; and
  - (b) in the case of an amendment to exclude a building, must serve a notice on every owner and occupier of the building, stating that the building has been excluded from the list.
- (3B) Section 2D makes provision about the further steps that the Welsh Ministers must take after amending a list under section 1 to include a building which is situated in Wales.”

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- (4) In section 3 of that Act (temporary listing: building preservation notices)—
- (a) in the opening words of subsection (2), after “a local planning authority” insert “ under this section ”,
  - (b) in the opening words of subsection (3), after “building preservation notice” insert “ under this section ”,
  - (c) in the opening words of subsection (4), after “building preservation notice” insert “ under this section ”,
  - (d) in subsection (5), after “building preservation notice” insert “ under this section ”, and
  - (e) in subsection (6), after “building preservation notice” insert “ under this section ”.
- (5) In section 4 of that Act (temporary listing in urgent cases), in subsection (2), for “section 3,” substitute “ sections 3 and 3A, ”.
- (6) In section 5 of that Act (provisions applicable on lapse of building preservation notice)—
- (a) the existing provision becomes subsection (1), and
  - (b) after that subsection insert—  
“(2) See section 3A(6) for provision as respects the lapse of building preservation notices in consequence of interim protection taking effect.”
- (7) In section 21 of that Act (appeals: supplementary provisions), in subsection (4), after “a building with respect to which” insert “ interim protection has effect or ”.
- (8) In section 31 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), after “payable under sections 28” insert “ , 28B ”.
- (9) In section 60 of that Act (exceptions for ecclesiastical buildings and redundant churches), in subsection (2), after “sections 3,” insert “ 3A, ”.
- (10) In section 61 of that Act (exceptions for ancient monuments etc), in subsection (2), for “sections 3,” substitute “ sections 2B, 3, 3A, ”.
- (11) In section 62 of that Act (validity of certain orders and decisions), in subsection (2), before paragraph (a) insert—  
“(za) any decision on a review under section 2D;”.
- (12) In section 82 of that Act (application of Act to land and works of local planning authorities)—
- (a) in subsection (1), after “sections 2” insert “ to 2D, ”, and
  - (b) in subsection (3)—
    - (i) after “sections 1(3), (5) and (6),” insert “ 2B, 2C, ”,
    - (ii) after “28,” insert “ 28B, ”, and
    - (iii) after “Schedules 1” insert “ , 1A ”.
- (13) In section 88 of that Act (rights of entry), in subsection (4), after “section 28” insert “ , 28B ”.
- (14) In section 91 of that Act (interpretation), in subsection (1)—

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(a) in the definition of “building preservation notice”, for “section 3(1)” substitute “ sections 3(1) and 3A(1) ”, and

(b) insert at the appropriate place—

““interim protection” has the meaning given in section 2B(3);”.

(15) In Schedule 4 to that Act (further provisions as to exercise of functions by different authorities), in paragraph 7, in sub-paragraph (1), after “sections 3,” insert “ 3A, ”.

(16) In Schedule 6 to the Local Government (Wales) Act 1994 (c.19) (minor and consequential amendments: planning), in paragraph 25, in sub-paragraph (1), omit paragraph (b).

## 27 Issue of certificate that building not intended to be listed

(1) In section 6 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (issue of certificate that building not intended to be listed)—

(a) omit subsection (1),

(b) in subsection (2), omit “or (1)”, and

(c) in subsection (3), omit “or (1)”.

(2) In the heading to that section, after “listed” insert “ : England ”.

(3) After that section insert—

### “6A Issue of certificate that building not intended to be listed: Wales

(1) The Welsh Ministers may, on the application of any person, issue a certificate stating that the Welsh Ministers do not intend to list a building situated in Wales.

(2) The issue of a certificate under subsection (1) in respect of a building?—

(a) precludes the Welsh Ministers for a period of 5 years from the date of issue from exercising in relation to that building any of the powers conferred on them by section 1 or 2A; and

(b) precludes the local planning authority for that period from serving a building preservation notice in relation to it.

(3) Notice of an application under subsection (1) must be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Welsh Ministers.”

(4) In paragraph 9 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 (c.24) (heritage planning regulation), omit sub-paragraph (3).

### *Agreements relating to listed buildings*

## 28 Heritage partnership agreements

(1) After section 26K of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) insert—



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### *“Buildings in Wales: heritage partnership agreements*

#### **26L Heritage partnership agreements**

- (1) A relevant local planning authority may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (2) Any of the following may also be a party to an agreement made by a relevant local planning authority under this section (in addition to the owner and the authority)—
  - (a) any other relevant local planning authority;
  - (b) the Welsh Ministers;
  - (c) any occupier of the listed building;
  - (d) any person who has an interest in the listed building;
  - (e) any person involved in the management of the listed building;
  - (f) any other person who appears to the relevant planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) The Welsh Ministers may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (4) Any of the following may also be a party to an agreement made by the Welsh Ministers under this section (in addition to the owner and the Welsh Ministers)—
  - (a) any relevant local planning authority;
  - (b) any occupier of the listed building;
  - (c) any person who has an interest in the listed building;
  - (d) any person involved in the management of the listed building;
  - (e) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (5) An agreement under this section is referred to in this section and in section 26M as a “heritage partnership agreement”.
- (6) A heritage partnership agreement may contain provision—
  - (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates; and
  - (b) specifying any conditions to which the consent is subject.
- (7) The conditions to which listed building consent may be subject under subsection (6)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (8) A heritage partnership agreement may also—

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- (a) specify or describe works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest;
  - (b) make provision about the maintenance and preservation of the listed building;
  - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the listed building;
  - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
  - (e) restrict access to, or use of, the listed building;
  - (f) prohibit the doing of any specified thing in relation to the listed building;
  - (g) provide for a relevant local planning authority or the Welsh Ministers to make payments of specified amounts and on specified terms—
    - (i) for, or towards, the costs of any works provided for under the agreement; or
    - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (9) In this section “specified” means specified or described in the heritage partnership agreement.
- (10) In this section and in section 26M—
- “owner”, 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”, in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

### **26M Heritage partnership agreements: supplemental**

- (1) A heritage partnership agreement—
  - (a) must be in writing;
  - (b) must make provision for the parties to review its terms at intervals specified in the agreement;
  - (c) must make provision for its termination and variation; and
  - (d) may contain incidental and consequential provision.
- (2) A heritage partnership agreement may relate to more than one listed building or part of such a building, provided that the following are parties to the agreement in each case—
  - (a) a relevant local planning authority or the Welsh Ministers; and
  - (b) an owner of the building or part.
- (3) The Welsh Ministers must by regulations make provision—

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- (a) about the consultation that must take place before a heritage partnership agreement is made or varied;
  - (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
  - (c) specifying terms that must be included in a heritage partnership agreement;
  - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement; and
  - (e) enabling any local planning authority who is a party to the heritage partnership agreement to terminate the agreement, or any provision of the agreement, by order.
- (4) Regulations under subsection (3)(d) or (e) may specify the provision that may be included in orders made by virtue of those paragraphs, including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision.
- (5) The Welsh Ministers may by regulations make provision—
- (a) disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26, 28, and 38 to 46 for the purposes of heritage partnership agreements;
  - (b) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (a), to apply with any modifications consequential on provision made under that paragraph—
    - (i) sections 30 to 37;
    - (ii) sections 62 and 63;
    - (iii) Parts 3 and 4;
    - (iv) Schedule 3.
- (6) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, listed building consent granted by such an agreement enures only for the benefit of the parties to the agreement).”
- (2) In section 91 (interpretation), in subsection (2), in the closing words, after “but this subsection does not affect the meaning of owner in section 11” insert “, 26L or 26M”.

#### Commencement Information

**I5** S. 28 in force at Royal Assent for specified purposes, see s. 41(1)(e)

### *Listed buildings: enforcement*

## **29 Temporary stop notices**

- (1) After section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) insert—

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### “44B Temporary stop notices

- (1) This section applies where it appears to a local planning authority in Wales that—
  - (a) works have been or are being executed to a listed building in their area; and
  - (b) the works are such as to involve a contravention of section 9(1) or (2).
- (2) The authority may issue a temporary stop notice if, having regard to the effect of the works on the character of the building as one of special architectural or historic interest, they consider it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
  - (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the authority's reasons for issuing the notice; and
  - (d) include a statement of the effect of section 44C.
- (4) A temporary stop notice may be served on a person who appears to the authority—
  - (a) to be executing the works or causing them to be executed; or
  - (b) to have an interest in the building.
- (5) The authority must display a copy of the notice on the building; and the copy must specify the date on which it is first displayed.
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary notice ceases to have effect—
  - (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the authority withdraws the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) A local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1)(b).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 44A.
- (11) A temporary stop notice does not prohibit the execution of works of such description, or the execution of works in such circumstances, as the Welsh Ministers may by regulations prescribe.

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

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
  - (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 44B(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is also a defence for the person to show—
  - (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
  - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
  - (c) that the works carried out were limited to the minimum measures immediately necessary; and
  - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

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

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 44B(5), has an interest in the building is, on making a claim to the local planning authority within the prescribed time and in the prescribed manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (2) But subsection (1) applies only if—
  - (a) the works specified in the notice are not such as to involve a contravention of section 9(1) or (2); or
  - (b) the authority withdraws the notice other than following the grant of listed building consent, after the day mentioned in subsection (1), which authorises the works.

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- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under a relevant provision; and
  - (b) the loss or damage could have been avoided if the claimant had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
- (5) In subsection (4)(a), each of the following is a relevant provision—
- (a) section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
  - (b) section 330 of the principal Act.”
- (2) In section 31 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), for “and 29” substitute “, 29 and 44D ”.
- (3) In section 82A(2) of that Act (Crown application: exceptions), after paragraph (f) insert—
- “(fa) section 44C;”.
- (4) In section 88 of that Act (rights of entry), after subsection (3) insert—
- “(3A) Any person duly authorised in writing by a local planning authority in Wales may at any reasonable time enter any land for any of the following purposes—
- (a) securing the display of a temporary stop notice (see section 44B);
  - (b) ascertaining whether a temporary stop notice is being complied with;
  - (c) considering any claim for compensation under section 44D.”
- (5) In subsection (4) of that section (entry by Valuation Office etc in connection with compensation claims), for “or 29” substitute “, 29 or 44D ”.
- (6) In section 88B of that Act (rights of entry: supplementary provisions), after subsection (1) insert—
- “(1A) Subsection (1) does not apply to a person authorised under section 88(3A) who intends to enter the land for either of the purposes mentioned in paragraphs (a) and (b) of that subsection.”
- (7) In Schedule 2 to that Act (lapse of building preservation notices)—
- (a) in paragraph 2, for “or 43” substitute “, 43 or 44C ”, and
  - (b) after paragraph 4 insert—
- “5  
Any temporary stop notice served by the local planning authority with respect to the building while the building preservation notice was in force ceases to have effect.”
- (8) In Schedule 4 to that Act (further provisions as to exercise of functions by different authorities), in paragraph 7, in sub-paragraph (1), after “42,” insert “ 44D, ”.

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### *Prevention of deterioration or damage to listed buildings*

#### **30 Urgent works: extension of scope and recovery of costs**

- (1) In section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (urgent works to preserve listed buildings), in subsection (4), after “If” insert “, in the case of a building in England,”.
- (2) After that subsection insert—

“(4A) If, in the case of a building in Wales, the whole or part of the building is in residential use, works may be carried out only where they would not interfere unreasonably with that use.”
- (3) After subsection (5) insert—

“(5A) Where the works are to be executed to a building in Wales the whole or part of which is in residential use, the occupier of the building must also be given not less than seven days' notice in writing of the intention to carry out the works.”
- (4) In subsection (6), after “subsection (5)” insert “ or (5A) ”.
- (5) In the heading to that section, omit “unoccupied”; and in the heading to section 76 of that Act (which enables the Welsh Ministers to direct that section 54 of that Act is to apply to buildings in conservation areas), omit “unoccupied”.
- (6) In section 55 of that Act (recovery of expenses), after subsection (5) insert—

“(5A) Where the Welsh Ministers make a determination under subsection (4), the owner of the building or (if it is given notice under subsection (5)) the local authority may, within 28 days of the service of the notice under subsection (5), appeal to the county court against the decision.

(5B) In the case of a building in Wales, as from the time when the notice under subsection (2) becomes operative, the expenses which an authority may recover under this section carry interest at such rate as the Welsh Ministers may prescribe by order until recovery of all sums due under this section; and the expenses and any interest are recoverable by the authority as a debt.

(5C) As from that time, the expenses and any interest are, until recovery, a charge on the land on which the building stands.

(5D) The charge takes effect at that time as a legal charge which is a local land charge.

(5E) For the purpose of enforcing the charge, the authority have the same powers and remedies under the Law of Property Act 1925 and otherwise as if they were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(5F) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(5G) For the purposes of subsections (5B) to (5F), the notice becomes operative—

  - (a) where no representations are made under subsection (4) within the period referred to in that subsection, at the end of that period;

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- (b) where representations are made as mentioned in paragraph (a) but no appeal against the determination under subsection (4) is made under subsection (5A) within the period referred to in that subsection, at the end of that period;
- (c) where an appeal is made as mentioned in paragraph (b) and the decision on the appeal confirms the determination under subsection (4) (with or without variation), at the time of the decision;
- (d) where an appeal is made as mentioned in paragraph (b) but is withdrawn, at the time of the withdrawal.”

#### Commencement Information

**I6** S. 30(1)-(5) in force at 21.5.2016, see s. 41(2)

**I7** S. 30(6) in force at 4.5.2017 for specified purposes by S.I. 2017/633, art. 2 (with art. 6(4))

PROSPECTIVE

### 31 Preservation of listed buildings in disrepair

- (1) After section 56 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) insert—

*“Further provision about preservation*

#### **56A Preservation of listed buildings in disrepair**

- (1) The Welsh Ministers may by regulations make provision about further steps that may be taken by local authorities or the Welsh Ministers to secure the proper preservation of listed buildings in Wales which have fallen into disrepair, and about connected matters.
  - (2) Regulations under this section may, among other things, make provision for—
    - (a) the service of a notice (a “preservation notice”) on the owner of a listed building in Wales which has fallen into disrepair, specifying—
      - (i) the works which the owner must execute to secure the proper preservation of the building; and
      - (ii) the time by which such works must be executed;
    - (b) appeals against preservation notices;
    - (c) offences for failure to comply with preservation notices;
    - (d) appeals in respect of such offences.
  - (3) Regulations under this section may disapply, or apply or reproduce with or without modifications, any provision of this Act.
  - (4) Regulations under this section may amend this Act.”
- (2) In section 82A of that Act (application to the Crown), in subsection (2), after paragraph (h) insert—
- “(ha) section 56A;”.



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- (3) In section 88 of that Act (rights of entry), in subsection (2)—
- (a) in paragraph (a), after “55,” insert “ 56A, ”, and
  - (b) in paragraph (c), after “section 9, 11, 26J or 43” insert “ or under regulations made under section 56A ”.
- (4) In Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008 (c.13) (power under specified enactments to include power to make provision for civil sanctions) at the appropriate place insert— “ Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9), section 56A ”.

### *Miscellaneous*

#### **32 Service of documents by electronic communication**

In section 89 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (application of certain general provisions of principal Act), in subsection (1A), at the beginning insert “ In the case of a building situated in England, ”.

#### **33 Determination of appeals by appointed person: supplementary provision**

- (1) In Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (determination of certain appeals by person appointed by Welsh Ministers), in paragraph 7, in sub-paragraph (2)—
- (a) in the opening words, omit “or the Welsh Office”; and
  - (b) omit paragraph (b) and the preceding “and”.
- (2) In that paragraph of that Schedule, after sub-paragraph (2) insert—
- “(3) Where an appointed person is a member of the staff of the Welsh Government, the functions of determining an appeal and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services Ombudsman (Wales) Act 2005 as functions of the Welsh Government.”

VALID FROM 08/05/2017

## **PART 4**

### **MISCELLANEOUS**

#### *Historic place names*

#### **34 List of historic place names**

The Welsh Ministers must compile and maintain a list of historic place names in Wales.

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VALID FROM 31/05/2017

### *Historic environment records*

#### **35 Historic environment records**

- (1) The Welsh Ministers must compile and keep up to date a historic environment record for each local authority area in Wales.
- (2) A historic environment record is a record which provides—
  - (a) details of every building in the authority's area which is included in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9),
  - (b) details of every conservation area in the authority's area which is designated under section 69 of that Act,
  - (c) details of every monument in the authority's area which is included in the Schedule compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46),
  - (d) details of each of the grounds in the authority's area which are included in the register of historic parks and gardens compiled and maintained under section 41A of that Act,
  - (e) details of every conflict site in the authority's area which the Welsh Ministers consider to be of historic interest,
  - (f) where a public authority (whether by itself or jointly with other persons) maintains a list of historic landscapes in Wales, details of every historic landscape in the local authority's area which is included in the list,
  - (g) details of every world heritage site in the authority's area,
  - (h) details of every other area or site or other place in the authority's area which the authority or the Welsh Ministers consider to be of local historic, archaeological or architectural interest,
  - (i) information about the way in which the historic, archaeological or architectural development of the authority's area, or any part of it, has contributed to the present character of the area or part and about how that character may be preserved,
  - (j) details of relevant investigations carried out in the authority's area and of the findings of those investigations, and
  - (k) a means of accessing details of every historic place name in the authority's area which is included in the list compiled and maintained under section 34.
- (3) In subsection (2)(e), “conflict site” means—
  - (a) a battlefield or a site on which some other conflict involving military forces took place, or
  - (b) a site on which significant activities relating to a battle or other such conflict as is mentioned in paragraph (a) occurred.
- (4) In subsection (2)(f), “public authority” means a person certain of whose functions are functions of a public nature.
- (5) In subsection (2)(g), “world heritage site” means a site or other place or other thing which is cultural heritage or natural heritage within the meaning of the World

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Heritage Convention and is included in the World Heritage List mentioned in Article 11 of that Convention.

- (6) In subsection (5), “the World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16 November 1972.
- (7) In subsection (2)(h), the reference to a local authority's area includes, in the case of an authority whose area includes part of the seashore, a reference to any part of the territorial sea that lies seawards from that part of the shore and forms part of Wales (within the meaning given by the Government of Wales Act 2006 (c.32)).
- (8) In subsection (2)(j), “relevant investigation”, in relation to a local authority's area, means —
  - (a) an investigation by the authority or the Welsh Ministers for the purpose of obtaining information of historic, archaeological or architectural interest relating to the area, and
  - (b) any other investigation for that purpose which the Welsh Ministers consider appropriate to include in the record.
- (9) The Welsh Ministers may by regulations amend this section so as to vary the meaning of “historic environment record”.
- (10) Before making regulations under subsection (9), the Welsh Ministers must consult—
  - (a) each local authority in Wales, and
  - (b) such other persons as the Welsh Ministers consider appropriate.
- (11) For the purposes of this section, an area or site or other place or other thing is to be regarded as being in a local authority's area if any part of it is in the area.
- (12) In this section and in section 37, “local authority” means a county council or a county borough council.

#### **Commencement Information**

**18** S. 35 in force at 31.5.2017 by S.I. 2017/633, art. 4(d)

### **36 Access to historic environment records**

- (1) The Welsh Ministers—
  - (a) must make each historic environment record available for public inspection in such manner as they consider appropriate;
  - (b) must, where a person requests a copy of part of a historic environment record or details accessed by means of such a record, and it appears to the Welsh Ministers that the request is reasonable, provide the person with a copy of that part of the record or those details;
  - (c) must make available to a person wishing to inspect a historic environment record advice on or assistance with retrieving and understanding information provided in the record or accessed by means of the record;
  - (d) must, where a person requests the retrieval of information provided in a historic environment record or accessed by means of such a record and it

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appears to the Welsh Ministers that the request is reasonable, compile for the person a document containing the information.

- (2) In assessing for the purposes of subsection (1)(b) or (d) whether a request is reasonable, the matters which the Welsh Ministers may take into account include any previous such requests made by or on behalf of the person concerned.
- (3) The Welsh Ministers may charge a fee for—
  - (a) providing a copy or details under subsection (1)(b);
  - (b) providing advice or assistance under subsection (1)(c);
  - (c) compiling a document under subsection (1)(d).
- (4) A fee charged under subsection (3) must be calculated by reference to the cost of providing the service to which the fee relates.

### **37 Guidance**

- (1) The Welsh Ministers must issue guidance to the bodies listed in subsection (2) on—
  - (a) the manner in which the bodies may contribute to the compilation of historic environment records and assist in keeping them up to date, and
  - (b) the use of historic environment records in the exercise of the bodies' functions.
- (2) The bodies are—
  - (a) local authorities in Wales;
  - (b) National Park authorities in Wales;
  - (c) Natural Resources Wales.
- (3) The bodies listed in subsection (2) must have regard to guidance issued under this section.
- (4) Before issuing guidance under this section, the Welsh Ministers must consult—
  - (a) the bodies listed in subsection (2), and
  - (b) such other persons as the Welsh Ministers consider appropriate.
- (5) The Welsh Ministers must lay before the National Assembly for Wales any guidance issued under this section.

PROSPECTIVE

*Advisory Panel for the Welsh Historic Environment*

### **38 Establishment of Panel and work programme**

- (1) The Welsh Ministers must establish a panel of persons, to be known as the Advisory Panel for the Welsh Historic Environment (“the Panel”).
- (2) The purpose of the Panel is to provide the Welsh Ministers with advice on matters relating to the formulation, development and implementation of policy and strategy in relation to the historic environment in Wales; and for this purpose “Wales” has the

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same meaning as in the Government of Wales Act 2006 (c.32) (see section 158(1) of that Act).

- (3) The Panel must, before each relevant financial year, publish a document (the “work programme”) setting out the matters on which it plans to provide the Welsh Ministers with advice during the period of three years comprising that financial year and the two subsequent financial years.
- (4) “Financial year” means the period of 12 months ending with 31 March; and “relevant financial year” means—
  - (a) the first financial year to begin after the commencement of subsection (3), and
  - (b) each third financial year afterwards.
- (5) The Panel must keep the work programme under review and may amend it in light of doing so; and where the Panel amends the work programme, it must publish it as amended.
- (6) Before publishing the work programme under subsection (3) or (5), the Panel must submit a draft of it to the Welsh Ministers; but the requirement to submit a draft amended under subsection (5) applies only in so far as the Panel considers the amendments significant.
- (7) The Welsh Ministers, having received a draft under subsection (6), may approve the draft with or without modifications.
- (8) The Panel must, at the end of each financial year, publish a document setting out the matters in the work programme on which it has provided the Welsh Ministers with advice during that financial year.

### **39 Constitution etc**

- (1) The members of the Advisory Panel for the Welsh Historic Environment are to be appointed on such terms and conditions as the Welsh Ministers determine.
- (2) The membership of the Panel must not exceed 15 persons.
- (3) The Panel is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The validity of an act of the Panel is not affected by a vacancy among its members.
- (5) The Welsh Ministers may pay a member of the Panel such fees, allowances or expenses as the Welsh Ministers may determine.
- (6) The Welsh Ministers may provide such staff, accommodation or other facilities as the Welsh Ministers may consider necessary to enable the Panel to carry out its functions.
- (7) A person is disqualified from membership of the Panel if the person is—
  - (a) a member of the National Assembly for Wales,
  - (b) a member of the House of Commons or the House of Lords,
  - (c) a member of the Scottish Parliament,
  - (d) a member of the Northern Ireland Assembly,
  - (e) a member of the European Parliament,
  - (f) a member of a county council or county borough council in Wales,

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- (g) a member of a National Park authority in Wales, or
  - (h) a member of staff of an organisation specified in regulations made by the Welsh Ministers.
- (8) Accordingly, a disqualified person may not be appointed as a member of the Panel; and a person appointed as such who becomes disqualified ceases to be a member.
- (9) The Welsh Ministers may dismiss a member of the Panel if satisfied that the member—
- (a) is unfit to continue as a member,
  - (b) is unable or unwilling to act as a member, or
  - (c) has brought the Panel into disrepute.
- (10) A member of the Panel may resign by giving not less than three months' notice in writing to the Welsh Ministers.

## PART 5

### GENERAL

#### 40 Regulations and orders

- (1) In section 60 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (regulations and orders: general provisions), after subsection (1) insert—
- “(1A) Any power of the Welsh Ministers to make regulations or an order under this Act includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate.”
- (2) After subsection (2) of that section insert—
- “(3) Any power of the Welsh Ministers to make regulations under this Act or an order under section 3, 37 or 61 is exercisable by statutory instrument.
- (4) A statutory instrument containing—
- (a) regulations under section 1AA or 9ZB; or
  - (b) regulations which, by virtue of subsection (1A), amend or repeal any provision of an Act of Parliament or an Act or Measure of the National Assembly for Wales,
- may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) Any other statutory instrument containing regulations or an order made by the Welsh Ministers under this Act, other than regulations under section 19, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) In section 93 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) (regulations and orders: general provisions), in subsection (1), after “regulations

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under this Act” insert “ in relation to England and the Welsh Ministers may make regulations under this Act in relation to Wales ”.

- (4) In subsection (3) of that section—
  - (a) after “regulations made under this Act” insert “ , other than regulations under section 2A , 26M or 56A, ”, and
  - (b) after “either House of Parliament” insert “ (in the case of regulations made by the Secretary of State) or the National Assembly for Wales (in the case of regulations made by the Welsh Ministers) ”.
- (5) After subsection (3) of that section insert—

“(3A) A statutory instrument containing regulations under section 2A, 26M or 56A may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- (6) In subsection (4) of that section, after “sections 8(5), 26C,” insert “ 55(5B), ”.
- (7) In subsection (5) of that section—
  - (a) after “an order under section” insert “ 55(5B), ”, and
  - (b) after “either House of Parliament” insert “ (in the case of an order made by the Secretary of State) or the National Assembly for Wales (in the case of an order made by the Welsh Ministers) ”.
- (8) In subsection (6) of that section, after “the Secretary of State” insert “ or (as the case may be) the Welsh Ministers ”.
- (9) In section 21 of that Act (appeals: supplementary provision), omit subsections (10) and (11).
- (10) In Schedule 3 to that Act (determination of certain appeals by person appointed by Welsh Ministers), in paragraph 8, omit sub-paragraph (6).
- (11) Regulations under this Act must be made by statutory instrument.
- (12) A statutory instrument containing—
  - (a) regulations under section 35(9) (power to vary meaning of “historic environment record”), or
  - (b) regulations under section 39(7)(h) (Advisory Panel for Welsh Historic Environment: disqualification from membership for staff of specified organisations),may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

## 41 Coming into force

- (1) The following provisions of this Act come into force on the day on which this Act receives Royal Assent—
  - (a) Part 1;
  - (b) section 2;
  - (c) sections 3, 5 and 11 and Schedule 1, so far as they confer power to make regulations under the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);

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- (d) section 23;
  - (e) sections 24 and 28 and Schedule 2, so far as they confer power to make regulations under the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9);
  - (f) this Part.
- (2) Sections 6 to 9, 12 to 17, 19 to 22, 27, 29, 30(1) to (5), 32 and 33 come into force at the end of the period of 2 months beginning with the day on which this Act receives Royal Assent.
- (3) The other provisions of this Act come into force, and sections 3, 5, 11, 24 and 28 and Schedules 1 and 2 come into force for remaining purposes, on such day as the Welsh Ministers may appoint by order.
- (4) An order under subsection (3)—
- (a) may appoint different days for different purposes;
  - (b) may make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.
- (5) An order under subsection (3) must be made by statutory instrument.

#### **42 Short title**

The short title of this Act is the Historic Environment (Wales) Act 2016.



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## SCHEDULE 1

(introduced by section 3)

SCHEDULES A1 AND A2 TO BE INSERTED INTO THE ANCIENT  
MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979**Commencement Information**

**I9** Sch. 1 in force at Royal Assent for specified purposes, see s. 41(1)(c)

## “SCHEDULE A1

(introduced by section 1AC)

## LAPSE OF INTERIM PROTECTION

- 1 This Schedule applies where interim protection ceases to have effect in relation to a monument as a result of the issue of a notice under section 1AB(4)(b) or (5)(b).
- 2 The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 2, 9ZG, 9ZK, 28 or 42 committed with respect to the monument while the interim protection had effect.
- 3 Any proceedings on or arising out of an application for scheduled monument consent with respect to the monument lapse, in so far as they relate to consent required by virtue of the interim protection; and any such consent granted lapses to the same extent.
- 4 (1) Any scheduled monument enforcement notice served by the Welsh Ministers with respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.
  - (2) Any proceedings on or arising out of such a notice under section 9ZE or 9ZF(4) lapse, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.
  - (3) Notwithstanding sub-paragraph (1), section 9ZF(2) continues to have effect as respects any expenses incurred by a person authorised by the Welsh Ministers as mentioned in section 9ZF(1), and with respect to any sums paid on account of such expenses.
- 5 Any temporary stop notice served by the Welsh Ministers with respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.
- 6 Any proceedings on an application made by the Welsh Ministers under section 9ZM with respect to the monument lapse, in so far as they relate to the restraint of any actual or apprehended contravention in relation to anything in respect of which the interim protection had effect.

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## SCHEDULE A2

(introduced by section 1AE)

### DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH MINISTERS

#### *Decisions on reviews by appointed persons*

- 1 (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 1AE on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.
- (2) Decisions on reviews of a prescribed class are to be made accordingly.
- (3) This paragraph does not affect any provision in this Act or any instrument made under it that an application for a review is to be made to the Welsh Ministers.
- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

#### *Powers and duties of appointed person*

- 2 (1) An appointed person has the same powers and duties in relation to a review under section 1AE as the Welsh Ministers have under—
  - (a) subsections (3)(a) and (b) and (5) of that section; and
  - (b) regulations made by virtue of subsection (7) of that section.
- (2) Where an appointed person makes a decision on a review, the decision is to be treated as that of the Welsh Ministers.
- (3) Except as provided by section 55, the validity of that decision is not to be questioned in any legal proceedings.
- (4) No application may be made to the High Court under section 55 on the ground that a decision on a review ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person's power to make the decision before the decision is made.

#### *Appointment of another person to make a decision on a review*

- 3 (1) At any time before an appointed person has made a decision on a review under section 1AE the Welsh Ministers may—
  - (a) revoke the person's appointment; and
  - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

#### *Public local inquiries, hearings and written representations*

- 4 (1) An appointed person may appoint an assessor to provide advice on—
  - (a) any matters arising at a public local inquiry or hearing held by the appointed person in connection with a review under section 1AE or in consequence of such an inquiry or hearing; or

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- (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (local inquiries: evidence) applies to a public local inquiry held by an appointed person.

#### *Directions*

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 1AE, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.
- (2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

#### *Delegation*

- 6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 1AE, other than—
- (a) the conduct of a public local inquiry or hearing; and
- (b) the making of a decision on the review under subsection (3)(b) of that section.
- (2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

#### *Supplementary provision*

- 7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 as functions of the Welsh Government.”

## SCHEDULE 2

(introduced by section 24)

### SCHEDULES 1A AND 1B TO BE INSERTED INTO THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

#### **Commencement Information**

**I10** Sch. 2 in force at Royal Assent for specified purposes, see s. 41(1)(e)

## “SCHEDULE 1A

(introduced by section 2C)

### LAPSE OF INTERIM PROTECTION

- 1 This Schedule applies where interim protection ceases to have effect in relation to a building as a result of the issue of a notice under section 2B(4)(b).

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- 2 The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 9, 43 or 44C committed with respect to the building while the interim protection had effect.
- 3 Any proceedings on or arising out of an application for listed building consent with respect to the building lapse; and any such consent granted while it had effect lapses.
- 4 (1) Any listed building enforcement notice served by the local planning authority with respect to the building ceases to have effect.  
 (2) Any proceedings on such a notice under sections 38 to 40 lapse.  
 (3) Notwithstanding sub-paragraph (1), section 42(1) and (2) continue to have effect as respects any expenses incurred by the local planning authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.
- 5 Any temporary stop notice served by the local planning authority with respect to the building ceases to have effect.

## SCHEDULE 1B

(introduced by section 2D)

### DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH MINISTERS

#### *Decisions on reviews by appointed persons*

- 1 (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 2D on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.  
 (2) Decisions on reviews of a prescribed class are to be made accordingly except in such classes of case as may for the time being be prescribed by the Welsh Ministers.  
 (3) This paragraph does not affect any provision in this Act or any instrument made under it that an application for a review is to be made to the Welsh Ministers.  
 (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

#### *Powers and duties of appointed person*

- 2 (1) An appointed person has the same powers and duties in relation to a review under section 2D as the Welsh Ministers have—  
 (a) under subsections (3)(a) and (b) and (5) of that section; and  
 (b) by virtue of section 322C and 323A of the Town and Country Planning Act 1990 (costs and procedural matters: Wales), as applied to this Act by section 89 of this Act.  
 (2) Where an appointed person makes a decision on a review under section 2D, the decision is to be treated as that of the Welsh Ministers.  
 (3) Except as provided by sections 62 and 63, the validity of the decision is not to be questioned in any legal proceedings.

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- (4) No application may be made to the High Court under section 63 on the ground that the decision ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person's power to make the decision before the decision is made.
- (5) Where in any enactment (including this Act) there is a reference to the Welsh Ministers in a context relating or capable of relating—
  - (a) to a review under section 2D; or
  - (b) to anything done or authorised or required to be done by, to or before the Welsh Ministers in or in connection with any such review,then, so far as the context permits and subject to sub-paragraph (6), the reference is to be construed, in relation to a review on which a decision has been made or is to be made by an appointed person, as a reference to that person.
- (6) Sub-paragraph (5) does not permit references to the Welsh Ministers in section 2D(2)(c), (3)(c) or (6) to be construed as references to an appointed person.
- (7) Sub-paragraph (1) does not affect the generality of sub-paragraph (5).

*Appointment of another person to make a decision on a review*

- 3 (1) At any time before an appointed person has made a decision on a review under section 2D the Welsh Ministers may—
  - (a) revoke the person's appointment; and
  - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

*Local inquiries, hearings and written representations*

- 4 (1) An appointed person may appoint an assessor to provide advice on—
  - (a) any matters arising at a local inquiry or hearing held by the appointed person in connection with a review under section 2D or in consequence of such an inquiry or hearing; or
  - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (local inquiries: evidence) applies to an inquiry held by an appointed person.

*Directions*

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 2D, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.
- (2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

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### *Delegation*

- 6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 2D, other than—
- (a) the conduct of a local inquiry or hearing; and
  - (b) the making of a decision on the review under subsection (3)(b) of that section.
- (2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

### *Supplementary provision*

- 7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review under section 2D and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 as functions of the Welsh Government.”

**Status:**

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