



# Historic Environment (Wales) Act 2016

2016 anaw 4

## 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);
- (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

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

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## **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—
  - (a) carry out the review requested;

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- (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.
- (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

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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

- II 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))—
- is of special architectural or historic interest; and
  - 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—
- 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
  - explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice under this section—
- comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
  - 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—
- if interim protection under section 2B(2) takes effect in relation to the building; or

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- (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).

VALID FROM 21/05/2016

## 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).

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### *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—

*“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.

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- (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—
- (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.

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- (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—
    - (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**

**I2** S. 28 in force at Royal Assent for specified purposes, see s. 41(1)(e)

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VALID FROM 21/05/2016

### *Listed buildings: enforcement*

## **29 Temporary stop notices**

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

### **“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.

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- (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.

#### **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.

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#### **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.
- (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 ”.

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(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, ”.

VALID FROM 21/05/2016

*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))



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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;
  - (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

**I3** S. 30(1)-(5) in force at 21.5.2016, see s. 41(2)

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—

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*“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;”.
  - (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 ”.

VALID FROM 21/05/2016

*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, ”.

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### **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.”

**Status:**

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**Changes to legislation:**

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