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# Historic Environment (Wales) Act 2016

2016 anaw 4

## PART 3

### LISTED BUILDINGS

*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;

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- (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).

### **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.

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- (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;
    - (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—

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### “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 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))—
  - (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—

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- (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—
    - (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

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- 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—
- “(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,”.

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- (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.”
- (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;”.

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- (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)—
- (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.



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- (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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