

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 — Buildings of special architectural or historic interest**

##### *Chapter 1 — Listing buildings of special interest*

##### *Section 76 — Duty to maintain and publish list of buildings*

255. **Section 76(1)** places a duty on the Welsh Ministers to maintain a list of buildings in Wales and to publish the up-to-date list. The Welsh Ministers must include in the list every building in Wales which they consider to be of special architectural or historic interest. In practice, in determining whether a building is, in their opinion, of special architectural or historic interest, the Welsh Ministers will have regard to the non-statutory criteria for listing published in TAN 24.
256. **Section 76(2)** gives the Welsh Ministers powers to amend the list by adding a building (referred to as “listing” a building), removing a building (referred to as “de-listing” a building) or amending an existing entry for a building.
257. In practice, buildings are added to the list either as a result of systematic survey of particular areas or building types, or following “spot listing” requests relating to particular buildings from local authorities, amenity societies, other bodies, or individuals.
258. The Welsh Ministers will only de-list a building if new evidence becomes available relating to its special architectural or historic interest. Neither the condition of a building through neglect nor the cost of repairing or maintaining it are grounds for de-listing.
259. The powers to amend an existing list entry may be used to correct factual mistakes, including address or location errors, as well as to enhance or revise a listing in light of new evidence relating to a building’s special architectural or historic interest.
260. **Section 76(3)(a)** provides that the Welsh Ministers may consider a building in its wider context when weighing up whether it should be listed. If, for instance, a candidate building is part of a group — perhaps a well-preserved terrace of houses, an industrial or agricultural complex or a planned community — its contribution to the architectural or historic interest of that group may be taken into account in addition to its own merits.
261. **Section 76(3)(b)** allows for the desirability of preserving an artificial feature of a building on the grounds of its architectural or historic interest to be taken into consideration when determining if a building should be listed. These artificial features might include interior fittings, such as fireplaces, panelling or staircases, or exterior features, perhaps sculptures, clocks or commemorative plaques. Artificial features do not encompass movable furnishings.
262. The definition of “building” in section 210 (interpretation) encompasses any building or structure, or any part of a building or structure. The meaning of “building” for the purposes of listing has been considered in case law (such as *Dill v Secretary of*

*State for Housing, Communities and Local Government and another* [2020] 1 WLR 2206). The definition in section 210 does not include (except in section 148) any plant or machinery forming part of a building or structure. This prevents large and complex pieces of plant and machinery, for example, steam engines, rolling mills or other industrial equipment, from being listed in their own right, either as freestanding constructions or independently of buildings that house them.

263. However, the presence of plant and machinery in a building may contribute to its special interest and be an important factor in a decision to list it. Once the building is listed, fixed plant and machinery contained within it will be included in the listing and will be subject to the controls in this Part.
264. **Section 76(5)(a)** clarifies that a “listed building” means a building which is included in the list and includes any structure or artificial object that is fixed to the building and ancillary to it; this will capture internal and external fixtures. On the other hand, movable furnishings, even of historic importance, are not part of the listing. For instance, subsection (5)(a) would apply to a fixed medieval masonry altar in a listed church, but not to a post-Reformation altar table. The requirement for an object or structure to be “ancillary” is based on case law, including *Debenhams plc v Westminster City Council* [1987] AC 396; *Morris v Wrexham County Borough Council* [2002] 2 P & CR 7; *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103.
265. In this context, “artificial” is used as an idiomatic term for objects or features that have been made or crafted by humans, in contrast to natural objects or features. Its use in this context is of no relevance to any question of whether “artificial” materials (in the sense of being imitation or synthetic) may be used in the conservation or repair of listed buildings.
266. Subsection (5)(b) provides that the listing of a building extends to include separate ancillary structures or artificial objects if certain conditions are met.
267. The first condition is that the structure or object has to have formed part of the land since before 1 July 1948, the date on which the [Town and Country Planning Act 1947 \(c. 51\)](#), the first legislation that made provision for statutory listing of buildings of architectural or historic interest, came into force.
268. The second condition is that the structure or object must have been within the curtilage of the building, and ancillary to it, on the date that the building was first listed or 1 January 1969, whichever was later. The provisions of the [Town and Country Planning Act 1968 \(c. 72\)](#) that introduced the extension of listing to structures and objects within a building’s curtilage came into force on 1 January 1969. The date has been included to give greater clarity to the definition of a listed building in line with recommendation 13.10 of the Law Commission’s report, *Planning Law in Wales* (Law Com No 383, 2018).
269. The section does not define “curtilage”. Case law (*Attorney General (ex rel Sutcliffe) v Calderdale BC* (1982) 46 P & CR 399, CA as accepted by *Debenhams plc v Westminster City Council*, 1987) provides that it is the land closely associated with a building and its extent will be determined on a case-by-case basis. Factors to be considered in determining whether other structures or artificial objects are encompassed within a building’s curtilage may include:
  - a. the physical “layout” of the building, associated structures and the land;
  - b. their ownership, past and present; and
  - c. their use and function, past and present.

*These notes refer to the Historic Environment (Wales) Act  
2023 (c.3) which received Royal Assent on 14 June 2023*

270. Examples of curtilage structures and objects to which listing may be extended under subsection (5)(b) include outbuildings, boundary walls, and garden features and ornaments.