

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 — Buildings of special architectural or historic interest

Chapter 2 — Control of works affecting listed buildings

307. Chapter 2 provides that, with certain specified exceptions, works for the alteration or extension of a listed building “that would affect its character as a building of special architectural or historic interest” or for the demolition of a listed building must be authorised by the grant of listed building consent. Consent may be granted by the planning authority in whose area the building is situated or by the Welsh Ministers (sections 88 and 89).
308. The Chapter makes provision for an application procedure for listed building consent routinely administered by planning authorities and the grant of consent subject to conditions (sections 90 to 99). The Chapter also puts in place mechanisms for appeals to the Welsh Ministers against planning authorities’ decisions (or, in some cases, their failure to make decisions) on matters including applications for listed building consent, applications for the variation or removal of conditions imposed on consent, and applications for the approval of details of works (sections 100 to 104).
309. The Chapter also provides that a planning authority or the Welsh Ministers may modify or revoke a listed building consent by order, and also provides for access to compensation for a person with an interest in a listed building who suffers loss or damage directly attributable to the modification or revocation of consent (sections 107, 108 and Schedule 8). If the owner of a listed building claims that reasonably beneficial use cannot be made of a listed building and its associated land as a consequence of the refusal of listed building consent, the grant of consent subject to conditions or the modification or revocation of consent by order, a purchase notice may be served on the planning authority. The effect of the notice is that, if particular conditions are met, the planning authority is required to purchase the land from the owner (sections 109 to 112 and Schedule 9).
310. Finally, the Chapter gives the Welsh Ministers powers to make regulations about applications for listed building consent made by planning authorities and applications made by or on behalf of the Crown (section 105). In cases where works to a listed building on Crown land are considered to be a matter of national importance and their execution a matter of urgency, an appropriate Crown authority may make a listed building consent application to the Welsh Ministers rather than to a planning authority (section 106).
311. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings. The guidance at the time of writing these notes, *Managing Change to Listed Buildings in Wales* (2017), sets out the general principles to follow when managing and making changes to listed buildings. It explains how to apply for listed building consent, including the roles and responsibilities of owners, planning authorities and Cadw.

Section 88 — Requirement for works to be authorised

312. **Section 88** provides that a person must not carry out certain works, or cause certain works to be carried out, unless they have been authorised by the grant of listed building consent under section 89.
313. Under subsection (2), the works requiring authorisation are:
- a. works for the alteration or extension of a listed building in any way that would affect its character as a building of special architectural or historic interest
 - b. works for the demolition of a listed building.
314. Therefore, works for appropriate routine maintenance and like-for-like repair that do not affect the character of a listed building do not require authorisation by listed building consent.
315. Subsection (3) excludes four categories of works from the requirement for authorisation:
- a. works in relation to a listed building that is also a scheduled monument

At the time of writing these notes, there are over 500 listed buildings in Wales that are also scheduled monuments. In such cases, the designation as a scheduled monument takes precedence and, in practice, scheduled monument consent under section 13 will be required for almost any works. It is no longer normal Cadw practice to schedule and list the same asset.
 - b. works in relation to an exempt religious building as defined in section 156
 - c. works for the demolition of all or part of a building closed for regular public worship in accordance with Part 6 of the Mission and Pastoral Measure 2011 (No. 3)

The 2011 Measure only applies to the Church of England so this provision of the Act will only affect the small number of religious buildings in Wales near the border with England that remain under the jurisdiction of that body.
 - d. urgently necessary works carried out by or on behalf of the Crown in the interests of safety or health or for the preservation of the building under the circumstances set out under section 117(4)(a)–(d).

Section 89 — Authorisation of works by listed building consent

316. **Section 89(1)** provides that works for the alteration, extension or demolition of a listed building are authorised if written consent is given by the planning authority in whose area the building is situated or the Welsh Ministers and the works are carried out in accordance with the terms of the consent including any conditions attached to it. Sections 97 and 98 make further provision about conditions attached to listed building consents.
317. The expectation is that listed building consent will be obtained before any works begin. However, under subsection (2) a planning authority or the Welsh Ministers may grant listed building consent for unauthorised works already carried out. In practice, it is only in exceptional circumstances and when the works undertaken have been for the benefit of the listed building that such consent will be granted. The applicant will need to fully justify the works in an application for listed building consent. In such cases, the works are only authorised from the grant of the consent. Any liability for an offence arising from the unauthorised works under section 117 remains and could be the basis for subsequent proceedings.

Section 90 — Applying for listed building consent

Section 91 — Notice of application to owners of building

318. **Section 90** provides for the application procedure for listed building consent. Applications for listed building consent are ordinarily made to the planning authority in whose area the listed building is situated. However, certain applications, specified in section 90(1), are made to the Welsh Ministers.
319. Subsection (2) sets out what must be included in an application for listed building consent and subsection (3) allows the Welsh Ministers to make regulations about an application's form and content and how it must be made. In practice, most listed building consent applications for works in Wales are submitted on the standard IAPP form provided on the Welsh Government's central online platform — Planning Applications Wales. However, an applicant can also submit an **application form**, with supporting documentation, by post.
320. Subsection (4) provides that the Welsh Ministers must make regulations to require an applicant to include with the application a statement — known as a “heritage impact statement” — about the impact of the proposed works on the character of the listed building and, depending upon the nature of the application, either or both of the design principles applied to the works and the handling of access issues. A heritage impact statement is the outcome of a heritage impact assessment. This process is more fully explained in Cadw's non-statutory, best-practice guidance, *Heritage Impact Assessment in Wales* (2017), which is kept under review.
321. **Section 91** provides that the Welsh Ministers may make regulations to require an applicant for listed building consent to give notice of the application to any owners of the building. This will ensure that owners have an opportunity to make representations regarding any works proposed to the listed building.

Section 92 — Procedure for dealing with application

322. **Section 92** makes provision for dealing with listed building consent applications.
323. Subsection (1) provides that a listed building consent application made to a planning authority must be dealt with by that authority except in the following circumstances:
- a. if the planning authority is required not to consider the application under section 90(6) or 91(3)

These sections prevent the planning authority from considering an application unless the applicant has provided all the prescribed information and supporting material. Planning authorities operate a validation procedure to determine if planning applications are complete and ready for processing. If validation reveals deficiencies in an application, the planning authority may request additional information from an applicant.
 - b. if the planning authority refuses to consider an application in accordance with section 93 (power to refuse to consider similar applications)
 - c. if the planning authority is required to refer the application to the Welsh Ministers under section 94 (discussed below).
324. The section's remaining provisions give the Welsh Ministers regulation-making powers and direction-making powers to put in place various elements of the listed building consent procedure.
325. Subsection (2) provides the Welsh Ministers with regulation-making powers which include powers to impose requirements for consultation or notification in relation to applications. In practice, these powers have been used to require planning authorities to notify certain national amenity societies — Historic Buildings and Places (formerly

the Ancient Monuments Society), the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and The Twentieth-Century Society — and the Royal Commission on the Ancient and Historical Monuments of Wales (“the Royal Commission”) if an application involves works for the demolition of a listed building or alterations that would entail the demolition of any part of a listed building. This affords these groups, with their specialist knowledge of listed buildings and the historic environment, the opportunity to offer the planning authority informed comment on proposals that would entail the destruction of all, or part, of a building listed for its architectural or historic interest.

Section 94 — Reference of application to Welsh Ministers

326. **Section 94(1)** and **(2)** gives the Welsh Ministers power to direct a planning authority to refer an application for listed building consent to them for determination. A direction may relate to a particular application or applications in relation to buildings specified in the direction.
327. The Welsh Ministers may use this power of direction to “call in” a listed building consent application for their own determination. In practice, the Welsh Ministers rarely call in a listed building consent application but may do so if it raises issues of more than local importance and is of exceptional significance or controversial. On the rare occasions when this power is used, it is usually in conjunction with section 95 where the planning authority has indicated that it is minded to grant consent and the notification suggests that the authority has not had proper regard to national policy for the protection of the historic environment.
328. Applications referred to the Welsh Ministers under this section are to be dealt with in accordance with the procedures set out in Chapter 2 of Part 5 of the Act. Section 174 sets out that proceedings on such applications may be conducted in one or more of the following ways:
- a. at a local inquiry,
 - b. at a hearing, or
 - c. by means of written representations.

Section 95 — Notification to Welsh Ministers before granting consent

329. **Section 95(1)** to **(3)** provides that a planning authority may not grant listed building consent without first notifying the Welsh Ministers of the application and providing details of the works for which consent is sought. The Welsh Ministers have 28 days to decide whether to direct the authority to refer the application to them under section 94 or to request more time to consider making such a direction. If, at the end of 28 days, the Welsh Ministers have made no response or have notified the authority that they do not intend to make a direction to call in the application, the planning authority may grant the consent. A planning authority does not need to notify the Welsh Ministers if they refuse listed building consent.
330. Under subsection **(4)**, the Welsh Ministers may make regulations to describe listed building consent applications which planning authorities generally may determine without notifying the Welsh Ministers. At present, all planning authorities may grant listed building consent for works affecting the interior only of Grade II (unstarred) listed buildings without notification to the Welsh Ministers.
331. Subsections **(5)** and **(6)** permit the Welsh Ministers to issue directions to specific planning authorities. Under subsection **(5)**, the Welsh Ministers may direct a planning authority that the requirement to notify them does not apply to a listed building consent application, or, conversely, that the requirement applies in spite of any existing regulations or direction to the contrary.

332. Subsection (6) sets out that a direction may relate to a particular case or cases of a description specified in the direction.
333. Subsection (7) provides that the Welsh Ministers may attach specific requirements to regulations under subsection (4) or directions under subsection (6)(b). For instance, they may specify how and by whom a listed building consent application must be handled.
334. As of April 2023, the Welsh Ministers have issued directions to nine planning authorities in Wales permitting the authorities to dispense with the procedure of notifying the Welsh Ministers of an application for listed building consent involving works affecting the exterior of grade II (unstarred) listed buildings. This is subject to certain caveats, including the authority following the advice of a named, specialist conservation expert. Two of these planning authorities also have such autonomy for grade II* buildings but in all cases the arrangements exclude applications for demolition.

Section 96 — Grant or refusal of consent

335. Section 96(1) provides that a planning authority or the Welsh Ministers may grant or refuse listed building consent.
336. In reaching a decision on an application, subsection (2) requires that a planning authority or the Welsh Ministers must have special regard to the desirability of preserving the listed building, any features of special architectural or historic interest and the building's setting. Preserving a building or other historic asset does not mean that it has to be maintained unchanged, but that its significance is sustained for the future. The application and interpretation of "preserve" — with the meaning "to keep safe from harm" — has been the subject of case law (*South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 ALL ER 573).
337. In determining an application, the supporting planning advice and guidance (for example TAN 24 and *Managing Change to Listed Buildings in Wales* (2017)) explains that the aim should be to find the best way to protect and enhance the special qualities of a listed building and retain it in use.
338. The planning advice and guidance (for example TAN 24, paragraph 1.25) clarifies that the setting of a listed building "includes the surroundings in which it is understood, experienced, and appreciated embracing present and past relationships to the surrounding landscape". Cadw has published non-statutory, best-practice guidance, *Setting of Historic Assets in Wales* (2017), which is kept under review.
339. Subsection (3) provides that, subject to its terms, a listed building consent will have effect for the benefit of the building and the land on which it is situated, and of all persons for the time being interested in the building and land. This means that, should the ownership or occupancy of a listed building change during the course of consented works, the effect of the listed building consent will be unaltered and any consented works may continue uninterrupted.

Section 97 — Power to grant consent subject to conditions

340. Section 97 allows listed building consent to be granted subject to conditions.
341. Subsection (2) provides examples of conditions, but the list is not exhaustive. *Welsh Government Circular 016/2014, The Use of Planning Conditions for Development Management*, at paragraph 5.75, recommends that conditions on listed building consents should be drafted on the basis of the principles and tests that the circular sets out for the drafting of planning conditions. It offers a set of model conditions (conditions 71–80 in the appendix to the circular) for listed building consents, which, again, is not exhaustive.

342. Under subsection (5), a consent for demolition of a listed building must include a condition allowing for the recording of the building by the Royal Commission. Under the terms of its **Royal Warrant**, the Royal Commission has a responsibility to survey and record “buildings, sites and ancient monuments of archaeological, architectural and historic interest” in Wales and the adjacent territorial sea. The Royal Commission must also compile and curate the National Monuments Record for Wales “as the basic national record of the archaeological and historical environment”; Coflein is the online database for the National Monuments Record of Wales.

Section 98 — Condition about period within which works must start

343. **Section 98(1)** requires a listed building consent to be granted subject to a condition that works must start within a period specified in the condition. The period begins on the day on which the consent is granted. If the consented works do not start within that period, the consent will lapse. Once works are started within the specified period, a consent will have effect for the benefit of the listed building and the land on which it is situated and all persons with an interest in the building and land, subject to any terms of the consent (section 96(3)).
344. Subsection (2) sets out that if a consent fails to include a condition specifying a period within which works must begin, works must begin within five years of the day on which consent was granted.
345. Subsection (3) provides that this section does not apply where listed building consent is granted:
- a. under section 89(2) for works carried out before the consent was granted
Since the consent authorises works that have already been completed, a requirement for works to begin is unnecessary.
 - b. by a listed building partnership agreement under section 113(6).
Partnership agreements may run for ten to fifteen years and the consents that they grant last for the lifetime of the agreements, irrespective of when works begin.

Section 99 — Application for variation or removal of conditions

346. **Section 99** permits any person interested in a listed building to apply to the planning authority for the variation or removal of conditions attached to a consent for that building.
347. The use of the term “removal” in this section represents a change from the corresponding “discharge” in section 19 of the 1990 Listed Buildings Act, from which it is derived. This will help to reduce confusion between the matters in section 99 and what is widely known in the historic environment sector as the “discharge” of a condition — the approval by a consenting authority of details of works required by a condition, often necessary before works can progress. Application for such approval (discharge) is made on the standard 1APP form provided on the Planning Applications Wales website. In such applications, since the applicant is only seeking acknowledgement of compliance with a condition rather than any alteration to it, the application requirements are minimal and the procedures are straightforward.
348. This change accordingly helps to clarify that section 99 is concerned with alterations to the conditions of a listed building consent, which could potentially impact upon the character of a listed building. Consequently, subsection (3) provides that an application for variation or removal of conditions must comply with all the listed building consent application requirements and procedures set out in sections 90 to 95 (except the requirement for a heritage impact statement in section 90(4)). This includes that the application will usually be made to the planning authority in whose area the building is situated (unless specific enactments apply to the application), and the requirement for

the planning authority to notify the Welsh Ministers if it intends to grant the application, allowing the Welsh Ministers to call the application in for determination.

349. Subsection (5) stipulates that this section does not apply to a consent granted by a listed building partnership agreement. Just as the listed building consents contained in a listed building partnership agreement would be a matter of negotiation between the parties to the agreement, so too would any variation or removal of conditions of those consents. Section 114(2)(e) requires a listed building partnership agreement to make provision for its variation, which could include, but would not be limited to, the variation or removal of conditions.

Section 100 — Right to appeal against planning authority decision or failure to make decision

Section 101 — Procedure for making appeal

350. **Section 100** provides that where an application has been made to a planning authority for listed building consent (or certain other types of applications relating to conditions of consent), the applicant may appeal to the Welsh Ministers if the planning authority refuses the application (or imposes conditions, or new conditions, on a consent) or fails to give notice of its decision on the application within the “determination period”. The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012, SI 2012/973 (W 108) (“the 2012 regulations”) set the determination period at eight weeks.
351. **Section 101** puts in place the procedures for making an appeal under section 100. Subsection (1) requires a notice of appeal to be served on the Welsh Ministers and subsection (3) provides that the Welsh Ministers may make regulations about the form of the notice, information that must be included with a notice and how a notice of appeal must be served and the time limit for serving it.
352. At the time of writing these notes, the required notice of appeal is available on the “Planning appeal forms” page of the Welsh Government website. It incorporates a statement, known as a “certificate of ownership”, that the person making the appeal has complied with the requirements imposed by subsection (4) to give notice of the appeal to the owners of the building.
353. Subsection (5) provides that regulations making provision about the time limit for serving a notice of appeal must allow a period of at least 28 days for the appellant to serve notice of the appeal, starting from the day after the day of the receipt of a notice of decision or the end of the determination period (as the case may be).
354. At the time of writing these notes, under the 2012 regulations **an applicant is allowed six months** to make an appeal against a decision of a planning authority. If the applicant is making an appeal because the planning authority has failed to give notice at the end of the eight-week determination period, there is no deadline for an appeal.

Section 103 — Decision on application after service of notice of appeal

355. **Section 103** sets out how an appeal must be dealt with if it relates to a planning authority’s failure to give notice by the end of the determination period as set out in section 100(3).
356. Subsection (2) prohibits the Welsh Ministers from determining the appeal before the end of a period which they specify in regulations (four weeks under the 2012 regulations). Subsection (3) allows the planning authority to give notice of its decision on the application at any time during the same period.
357. Subsections (4) and (5) provide that if the planning authority determines the application within that four-week period, the Welsh Ministers must give the appellant the opportunity to proceed with the appeal and revise the grounds if the application is refused or the consent is granted subject to conditions.

Section 104 — Determination of appeal

358. **Section 104** makes various provisions about how the Welsh Ministers may determine an appeal made under section 100.
359. Subsection (4) signposts that Chapter 2 of Part 5 of the Act provides for the procedure by which an appeal is to be considered. Section 173 sets out that, unless the Welsh Ministers direct otherwise, an appeal will be determined by a person appointed by the Welsh Ministers, and the appointed person will have the same powers and duties as the Welsh Ministers. In practice, it is likely that the appointed person will be an inspector from Planning and Environment Decisions Wales. Section 174 requires the Welsh Ministers to decide that the appeal proceedings will be conducted in one or more of the following ways:
- a. at a local inquiry,
 - b. at a hearing, or
 - c. by means of written representations.

Section 105 — Applications by planning authorities and the Crown

360. **Section 105** provides that the Welsh Ministers may make regulations to provide that any provisions of the Act, or of regulations made under the Act, do not apply, or apply with modifications, to particular applications made by a planning authority or by or on behalf of the Crown. Subsection (2) provides that the applications in question are ones for listed building consent, the variation or removal of consent conditions, or approval of details of works under a consent condition.
361. Subsection (3) provides that the regulations may, in particular, require applications to be made to the Welsh Ministers.
362. Under the 2012 regulations, a planning authority must apply to the Welsh Ministers for listed building consent for the demolition of a listed building in its ownership. A planning authority may determine its own applications for listed building consent if they do not involve demolition. Unless the Welsh Ministers have directed otherwise under section 95, a planning authority must advise the Welsh Ministers if it is minded to approve an application, which gives the Welsh Ministers an opportunity to call the application in.

Section 106 — Applications relating to urgent works on Crown land

363. **Section 106** provides that an appropriate Crown authority may apply directly to the Welsh Ministers for listed building consent (instead of to a planning authority) if:
- a. the listed building is on Crown land, and
 - b. the appropriate Crown authority certifies that the works for which consent are sought are of national importance and must be carried out as a matter of urgency.
364. “Crown land” and “an appropriate Crown authority” are defined in section 207.
365. The Crown Estate Commissioners might, for instance, make such an application relating to a listed building on the extensive Crown Estate holdings in Wales. The Crown Estate owns 65 per cent of the foreshore and riverbed in Wales, including the port of Milford Haven and a number of other ports and marinas. Similarly, the Ministry of Defence could apply for listed building consent for a building on one of the several military training areas in Wales.
366. In the latter instance, subsection (8) may be of particular relevance. It provides that the requirement in subsection (4) for the Welsh Ministers to make available for public inspection any statements and information relating to the application does not apply

if the statement or information is subject to a direction under section 178. The Welsh Ministers would make a direction under that section where they are satisfied that the statement or information contains information relating to national security and that its disclosure would be contrary to the national interest.

367. Subsection (7) signposts the sections that provide for the procedure by which an application made under this section is to be considered. Section 174 sets out that the Welsh Ministers must choose to conduct proceedings in one or more of the following ways:
- a. at a local inquiry,
 - b. at a hearing, or
 - c. by means of written representations.

Section 107 — Modification and revocation of consent

Schedule 8 — Procedure for orders modifying or revoking listed building consent

368. **Section 107** provides that a planning authority or the Welsh Ministers may, by order, modify or revoke to any extent a listed building consent granted on application or appeal under this Part of the Act. Such an order may be made at any time before the conclusion of the works, but it will have no effect on the consent for works already completed.
369. **Schedule 8** sets out procedures that must be followed before an order made by a planning authority (Part 1), or an order made by the Welsh Ministers (Part 2), takes effect.
370. **Paragraph 1** of Schedule 8 provides for two mechanisms for an order made by a planning authority to take effect. The first requires the order to be confirmed by the Welsh Ministers under paragraph 2 before it takes effect. The second, under paragraph 3, does not require the order to be confirmed by the Welsh Ministers if certain conditions are met.
371. **Paragraph 2(1)** requires a planning authority that has submitted an order under section 107 to the Welsh Ministers for confirmation to give notice of the submission to every owner and occupier of the listed building and any other person whom it thinks will be affected by the order.
372. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from Planning and Environment Decisions Wales. The period of at least 28 days must begin with the day after the day the notice is served (paragraph 2(2) and (4)).
373. **Paragraph 3** sets out the procedure for an order made by a planning authority to take effect without being confirmed by the Welsh Ministers.
374. Under paragraph 3(1), this procedure applies only if the following have notified the authority that they have no objection to the order:
- a. every owner and occupier of the listed building, and
 - b. every other person the planning authority thinks will be affected by the order.
375. This procedure is only likely to be used if the modification or revocation of consent is being done with the understanding and agreement of the interested parties. If they accept the order without objection, they will have no future claim to compensation under section 108.
376. If no objections are raised by the interested parties, subparagraph (2) requires the planning authority to publish notice of the order.

377. The notice must give persons affected by the order at least 28 days to notify the Welsh Ministers that they want the order to be submitted to the Welsh Ministers for confirmation under the procedure in paragraph 2. The period of at least 28 days must begin with the day after the day the notice is served (paragraph 3(3)(a) and (5)). This will permit a person who only became aware of the order when the notice was published by the authority to call for its confirmation by the Welsh Ministers. Similarly, following receipt of the notice, an individual who had earlier expressed no objection to the planning authority's order may decide instead to call for the order to be submitted for confirmation by the Welsh Ministers. If any person calls for the order to be submitted for confirmation, it cannot take effect unless confirmed in accordance with paragraph 2.
378. [Paragraph 3\(4\)](#) provides that if no affected person notifies the Welsh Ministers during an allotted period of at least 28 days that they want the order to be submitted to the Welsh Ministers for confirmation, and the Welsh Ministers do not, by the end of a succeeding period of at least 14 days, direct that the order must be submitted to them for confirmation, the order takes effect at the end of that period.
379. If the Welsh Ministers decide that a listed building consent should be modified or revoked, paragraph 4 establishes the procedure for making an order. Before making an order, the Welsh Ministers must consult the planning authority in whose area the listed building is situated (paragraph 4(1)).
380. The Welsh Ministers must also serve notice of the proposed order on every owner and occupier and any other person whom they believe will be affected. The notice must allow at least 28 days for a person on whom the notice is served to request a hearing before a person appointed by the Welsh Ministers, who will usually be an inspector from Planning and Environment Decisions Wales. The period of at least 28 days must begin with the day after the day the notice is served (paragraph 4(2)—(3) and (5)).

Section 108 — Compensation where consent is modified or revoked

381. [Section 108](#) provides that any person interested in a listed building is, on making a claim, entitled to compensation for expenditure incurred in carrying out works which became abortive or for any other loss or damage caused by the modification or revocation of a consent.
382. Subsection (1) makes clear that the section only makes compensation payable where an order under section 107 is made by a planning authority and confirmed by the Welsh Ministers or is made by the Welsh Ministers. If a planning authority order takes effect under the procedure in paragraph 3 of Schedule 8 (i.e. without the confirmation of the Welsh Ministers) no compensation is available. In those cases, affected persons will have chosen not to object to the order.
383. Irrespective of whether the order is made by the planning authority or the Welsh Ministers, the written compensation claim must be made to the planning authority in whose area the building is situated. A claim must be made within 6 months from the day on which the modification or revocation order took effect (subsections (2) and (5)).
384. For the purposes of this section, expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters; these might include, but are not limited to, site surveys and investigations, the preparation of a heritage impact statement and the production of detailed specifications of methodologies and materials (subsections (2) and (3)).
385. If a planning authority is liable to pay compensation under section 108, section 171(3) provides that, under certain circumstances, the Welsh Ministers may contribute towards the payment of the compensation or direct that another local authority contribute an amount to the payment.
386. [Sections 202, 203](#) and [204](#) make additional provisions about claims for compensation under this Act.

Section 109 — Purchase notice where consent is refused, granted subject to conditions, modified or revoked

387. Listed building controls place restrictions on what an owner can do with a building and in rare cases an owner may find that there is no viable use for a listed building. Left with a building of little value, under section 109 the owner may be able to serve a purchase notice that requires a planning authority to purchase the owner’s interest in the listed building and associated land if specific conditions are met.
388. A listed building owner may serve a purchase notice on the planning authority for the area in which the building is situated if consent:
- a. is refused,
 - b. granted subject to conditions, or
 - c. modified or revoked by order under section 107,
- and certain other conditions set out in subsections (4) and (5) are met.
389. The subsection (4) conditions are met if:
- a. the listed building and its associated land are unusable in their existing state;
 - b. in a case where conditions have been attached to a listed building consent, either as granted or after modification, the building and land cannot be made usable by carrying out the works in accordance with the conditions; and
 - c. the carrying out of any other works for which listed building consent has been granted (or for which a planning authority or the Welsh Ministers have undertaken to grant consent) also cannot make the building or land usable.
390. Subsection (6) defines “usable” as meaning “capable of reasonably beneficial use”.
391. Associated land must be in the same ownership as the listed building and must be treated as inseparable from the building. It would not be possible to serve a purchase notice requiring a planning authority to purchase curtilage buildings without the principal listed building.

Section 112 — Action following service of purchase notice

Schedule 9 — Action following service of purchase notice

392. [Section 112](#) introduces Schedule 9 which makes provision for the actions to be taken by a planning authority and the Welsh Ministers after the service of a purchase notice.
393. [Paragraph 1](#) of Schedule 9 requires that within three months of the day that the purchase notice was served the planning authority must respond to the person with either an acceptance notice or a rejection notice.
394. Subparagraph (2) explains that an acceptance notice will state either that the planning authority is willing to comply with the purchase notice or that another local authority or statutory undertaker identified in the notice has agreed to comply. A statutory undertaker is defined in paragraph 7 of the Schedule and section 210.
395. Subparagraphs (5) and (7) expand on the effect of the service of an acceptance notice. Subparagraph (5) treats the authority or undertaker as being authorised to carry out the compulsory acquisition of the interest in the listed building and associated land under section 137, and as having initiated the compulsory purchase by serving a “notice to treat” on the owner. This means that the purchase proceeds in accordance with the [Compulsory Purchase Act 1965 \(c. 56\)](#) and compensation is determined under the [Land Compensation Act 1961 \(c. 33\)](#) (“the 1961 Act”).

396. A rejection notice, on the other hand, sets out the reasons why the planning authority will not comply with the purchase notice, explains that no other body has been found willing to comply with it and states that copies of the purchase notice and rejection notice have been forwarded to the Welsh Ministers (subparagraph (3)).
397. Paragraphs 2 to 5 of the Schedule concern the Welsh Ministers' actions after receiving copies of a purchase notice and the rejection notice relating to it.
398. Paragraph 2(2) states that the Welsh Ministers must, subject to various provisions in subparagraphs (3) to (7), confirm a purchase notice if they are satisfied that:
- a. the conditions in section 109 are met; and
 - b. that the notice relates to all of the land adjoining or adjacent to the listed building that they consider is required for preserving the building or its amenities, providing access to it, or its proper control or management.
399. This second condition will help to safeguard the interests of an acquiring authority and increase the likelihood that it will be able to give the listed building and associated land a viable future.
400. Paragraph 4 explains the effect of the Welsh Ministers confirming a purchase notice. Where the Welsh Ministers do so, the specified authority — either the authority upon whom the notice was served or the authority or statutory undertaker substituted by the Welsh Minister under paragraph 2(7) — is effectively placed in the same situation as if it had served an acceptance notice. That authority is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase as explained in paragraph 397 above.
401. If, on the contrary, the Welsh Ministers are not satisfied that the section 109 conditions and other requirements specified in paragraph 2(2)(b) are fulfilled, they must, under paragraph 2(8), refuse to confirm a purchase notice.
402. Paragraph 2(3) provides that if the Welsh Ministers are satisfied that the conditions in section 109 are only met in relation to part of the land specified in the purchase notice, then the notice must only be confirmed in relation to that part. This would, for instance, enable the Welsh Ministers to exclude land from the scope of the purchase notice and subsequent compulsory acquisition (under paragraph 4(1)) which could practically be treated as a separate holding from the listed building.
403. Instead of confirming a purchase notice, paragraph 2(4) allows the Welsh Ministers to grant or reinstate a listed building consent or vary or remove conditions as required to permit works that would enable the listed building and associated land to be made usable.
404. Similarly, instead of confirming a purchase notice, paragraph 2(5)–(6) provides for a situation in which the Welsh Ministers may direct that, should another application for listed building consent or planning permission be made that would render the land, or any part of it, usable within a reasonable time, that application must be granted.
405. Paragraph 2(7) provides that, in confirming a purchase notice, if the Welsh Ministers believe that another local authority or statutory undertaker would be better able to secure the future of part or all of the land to which a purchase notice relates, they may modify the notice by substituting that authority or undertaker for the planning authority named in the notice.
406. Paragraph 3 requires the Welsh Ministers to give notice of the action that they propose to take on a purchase notice under paragraph 2 to the person who served the purchase notice and any authority or statutory undertaker involved with the matter. They must also give them the opportunity to appear before and be heard by an appointed person. The appointed person will usually be an inspector from Planning and Environment Decisions Wales.

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

407. [Paragraph 4](#) details the effect of the Welsh Ministers’ action with regard to a purchase notice received under paragraph 1(6).
408. [Paragraph 4\(3\)](#) provides that if the Welsh Ministers do not:
- a. confirm a purchase notice,
 - b. refuse to confirm a notice, or
 - c. take any of the other actions available to them under paragraph 2,
- within a relevant period (as defined in paragraph 4(5) and (6)), the purchase notice is to be treated as if it was confirmed by them at the end of that period. The authority upon which the purchase notice was served is effectively placed in the same situation as if it has served an acceptance notice; it is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase under section 137 and as having served a “notice to treat” on the person.