

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 — Buildings of special architectural or historic interest

Chapter 6 — General

567. [Chapter 6](#) provides powers for persons authorised by local authorities and by the Welsh Ministers to enter land. Sections 152 to 155 set out the general powers to enter land, when a power of entry can be exercised without a warrant and under what circumstances a warrant would be required.
568. The Chapter also includes a provision dealing with exempt religious buildings (section 156). This reflects the particular needs of listed buildings that are currently in use for religious purposes in Wales.
569. Finally, the Chapter provides interpretation for certain terms used in Part 3 (section 157).

Section 152 — Powers to enter land

570. [Section 152](#) sets out the different circumstances when a person authorised in writing by the Welsh Ministers or by a planning authority or other local authority can enter land in association with Part 3 (buildings of special architectural or historic interest) and Part 4 (conservation areas) of the Act.
571. Examples of persons authorised by the Welsh Ministers might be Cadw officers visiting buildings to assess them for designation or monitor their condition. Planning authorities, for instance, might authorise planning, conservation or enforcement officers to enter land in conjunction with their duties.
572. [Section 152\(7\)](#) allows an officer of the Valuation Office of His Majesty's Revenue and Customs or a person authorised in writing by the planning authority or the Welsh Ministers to enter land to survey or estimate the value of the land in connection with a claim for compensation.

Section 153 — Exercise of power to enter land without warrant

573. This section makes provision about the exercise of the power to enter land under section 152 without a warrant. Subsection (1) provides that the power may be exercised at any reasonable time.
574. Subsection (2) provides that a person may not enter land that is occupied in exercise of the power under section 152 unless at least 24 hours' notice has been given to every occupier of the land. Subsection (3) makes an exception where the power to enter land is for the purpose of determining whether to issue a temporary stop notice, to display a temporary stop notice or to determine whether a temporary stop notice is being complied with (under section 152(4)). A temporary stop notice is only issued when a planning authority considers that unauthorised works to a listed building should be

stopped immediately and the removal of the requirement for 24 hours' notice ensures that all aspects of a temporary stop notice can be handled with a minimum of delay to limit any harm to the character and significance of the building.

575. Subsection (6) provides that if the land in relation to which the power of entry is proposed to be exercised belongs to a statutory undertaker (as defined in section 210) and the statutory undertaker objects to proposed works as they will hamper its ability to carry out its undertakings, the authorised person would need the permission of the appropriate Minister prior to carrying out any works. "Appropriate Minister" is defined in section 265 of the 1990 Planning Act and may be either the Welsh Ministers or a particular Secretary of State depending on the undertaker.
576. Subsection (7) provides that an authorised person may not enter Crown land in exercise of the power of entry under this section without the permission of the appropriate Crown authority, or a person who is entitled to give permission. "Crown land" is defined in section 207(2) and the "appropriate Crown authority" in section 207(6).

Section 154 — Warrant to enter land

577. **Section 154** sets out the circumstances in which a justice of the peace may issue a warrant conferring a power to enter land on an authorised person for a purpose mentioned in section 152. On the basis of sworn written information, the justice of the peace must be satisfied that there are reasonable grounds for entering the land and that:
- a. admission to the land has been refused,
 - b. admission is reasonably expected to be refused, or
 - c. the need to enter the land is urgent.

A planning authority, for example, might need to undertake works to secure a building at risk of collapse.

578. The warrant can confer powers of entry on any person who is authorised in writing by the Welsh Ministers or a planning authority under section 152 to enter land for a particular purpose, but only for one occasion and, unless the case is a matter of urgency, only at a reasonable time. A warrant under this section will only have effect for one month from its date of issue.

Section 156 — Exempt religious buildings

579. **Section 156** enables the Welsh Ministers to make regulations to recognise a religious building used for religious purposes as an "exempt religious building". The effect of recognising an "exempt religious building" is that the following provisions of Part 3 of this Act do not apply in relation to the building:
- a. sections 83 and 84, which enable the temporary listing of a building
 - b. section 88, which requires works affecting a listed building to be authorised
 - c. section 118, which makes it an offence to intentionally damage a listed building
 - d. section 137, which enables a planning authority or the Welsh Ministers to compulsorily acquire a listed building in need of repair
 - e. section 144, which enables the local authority or the Welsh Ministers to carry out urgent works necessary for the preservation of a listed building.
580. At the time of writing these notes, approximately 2,000 religious buildings have been listed in Wales under the provisions set out in section 76, although not all of these are covered by the exemption. However, where they are covered, the provisions relating to religious exemption reflect the particular needs of listed buildings in use as places of

worship, but recognise the need to maintain an appropriate level of protection which is at least equivalent to that given to non-religious buildings.

581. Subsection (3)(a) provides that regulations under this section may recognise particular buildings or buildings of a description specified in the regulations (and a description of buildings may be specified by reference to a religious faith or denomination, a use made of the buildings, or any other circumstance).
582. Where religious denominations and faith groups in Wales are able to demonstrate that they have established, or will establish, sufficiently robust and transparent conservation processes for managing change affecting listed religious buildings, it may be possible to identify particular buildings used by those denominations and faith groups for religious purposes as being exempt. Any denomination or faith group may make representations to the Welsh Ministers if they wish to be considered for such an exemption.
583. At the time of writing these notes, the following denominations and faith groups have been able to demonstrate this to the satisfaction of the Welsh Ministers:
- a. the Baptist Unions of Great Britain and Wales
 - b. the Church in Wales
 - c. the Church of England
 - d. the Methodist Church
 - e. the Roman Catholic Church.
584. Subsection (3)(b) provides that the regulations may designate as exempt all or part of a religious building (so the exemption may apply to some parts of a building but not to others).
585. Subsection (3)(c) provides that the regulations may specify that only particular types of works are exempt from the requirement for listed building consent. The regulations may specify the nature of the works themselves or specify works by reference to the person by whom the works are carried out. For example, the regulations could stipulate that any work undertaken by third parties might not qualify for the exemption. In this way a service provider erecting a telecommunications mast on a church tower might need authorisation from the relevant planning authority by listed building consent. Any changes that fall outside the scope of the exemption would need to be authorised through the usual system of listed building consent (section 89).
586. [Section 156\(2\)](#) makes clear that, for the purposes of the exemption from requiring listed building consent, the fact that a building is out of use while works are being carried out (e.g. during major conservation works) does not prevent the building being regarded as “used for religious purposes” provided that it would be used for those purposes if it were not for those works.
587. Subsection (4)(a) provides that references in this section to a religious building include any artificial object or structure that is fixed to the building, or that is within the curtilage of the building. This means that some structures that are not listed in their own right might come into the scope of the religious exemption provided that they are in the curtilage of the listed building. These might include lychgates, boundary walls, memorials, vestries and school rooms. However, if there is a scheduled monument within the curtilage of an exempt religious building, any works to that monument will require scheduled monument consent.
588. Under subsection (4)(b), buildings that are wholly or mainly used as residences by ministers of religion are not considered to be religious buildings for the purposes of this section. Works to these buildings are therefore not covered by the exemption. Where a residential building is attached to a listed place of worship (for example, a presbytery

attached to a Catholic church, or a minister's house attached to a chapel), works to the residential building will need listed building consent from the local planning authority.

589. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed religious buildings. The guidance at the time of writing these notes, *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption* (2018), sets out the guiding principles to consider when planning changes to listed religious buildings covered by the regulations provided for by this Chapter. It also sets out a code of practice for denominational consent procedures, which explains how those principles should be included in the control and decision-making process.