

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

244. Buildings are listed when they are considered to be of special architectural or historic interest. Listed buildings represent a unique source of information about the past and make a valuable contribution to the quality and character of landscapes and townscapes in Wales.
245. In April 2023, there were 30,091 listed buildings in Wales. These include not only commonly recognised buildings — houses, shops, civic and religious buildings, barns and other farm buildings, and industrial buildings — but also walls, milestones, bridges, memorials, telephone boxes and many other types of structure. Listed buildings range in age from the medieval period to the very recent past.
246. A complete, up-to-date list of listed buildings is published on Cof Cymru.
247. Legislation relating to listed buildings is supported by planning policy and advice and best-practice guidance, notably TAN 24 and *Managing Change to Listed Buildings in Wales* (2017). This suite of documents explains that, while the Welsh Ministers are responsible for listing buildings, in practice, the process is managed by Cadw acting on their behalf. Annex B of TAN 24 sets out the non-statutory selection criteria that are used for assessing a building’s special architectural or historic interest.
248. Annex B of TAN 24 further sets out a non-statutory grading structure to reflect the relative importance of listed buildings:
- a. grade I (one) — buildings of exceptional interest  
These make up fewer than two per cent of the listed buildings in Wales.
  - b. grade II\* (two star) — particularly important buildings of more than special interest  
These make up about seven per cent of the total number of listed buildings in Wales.
  - c. grade II (two) — buildings of special interest which justify every effort being made to preserve them.  
These make up approximately 91 per cent of the total number of listed buildings in Wales.
249. Listing guides planning authorities in the performance of their functions. It ensures that careful consideration is given to buildings of special interest before planning decisions are taken. Listing does not prohibit change, but helps to ensure that it is carefully managed in accordance with Cadw’s *Conservation Principles* through the listed building consent regime.

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

250. This Chapter requires the Welsh Ministers to maintain and publish a list of buildings in Wales. They must include in the list every building in Wales they consider to be of special architectural or historic interest (section 76). For the purposes of the transition from the 1990 Listed Buildings Act, the list of buildings maintained by the Welsh Ministers under section 1 of that Act will become the list maintained for the purposes of section 76 of this Act.
251. Inclusion of a building on the list — “listing” (section 76(6)(a)) — renders it subject to the consent regime, enforcement procedures and other provisions contained in Chapters 2 to 6 of Part 3 of the Act.
252. This Chapter sets out the requirements for consultation before the Welsh Ministers amend the list by adding or removing a building (sections 77 and 78). It also gives owners and occupiers the opportunity to request a review of the Welsh Ministers’ decision to list a building (sections 81 and 82). It establishes that, during the consultation period, a building being considered for listing enjoys interim protection as if it were already a listed building (section 79). If the Welsh Ministers decide not to list a building, a person with an interest in the building who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (section 80).
253. The Chapter also provides for temporary listing by a planning authority (sections 83 to 85). Temporary listing allows an authority to confer the protection of listing on a building that it considers to be of special architectural or historic interest that is in danger of demolition or alteration that would affect its character. If temporary listing comes to an end under certain circumstances, a person with an interest in the building may be able to claim compensation from the planning authority for loss or damage suffered directly as a result of the temporary listing (section 86).
254. The Chapter concludes with provision for the Welsh Ministers to issue a certificate that they do not intend to list a building in Wales for a period of 5 years (section 87).

### ***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.
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.

### ***Section 77 — Notification of listing or de-listing of building***

271. When the Welsh Ministers list or de-list a building, section 77(1) requires them to serve notice on every owner and occupier and every relevant local authority in whose area the building is located.
272. Subsection (6) defines a “relevant local authority” for the purposes of this section as:
- a. a county council or county borough council,
  - b. a National Park authority, or
  - c. a joint planning board.
273. A joint planning board may be constituted under section 2(1B) and (1C) of the [Town and Country Planning Act 1990 \(c.8\)](#) (“the 1990 Planning Act”) as the planning authority for two or more areas, each of which is the whole or part of a Welsh county or county borough. At the time of writing, there is none in Wales.
274. When a property is listed, the notice served by the Welsh Ministers must specify the date of its addition to the list and must include a copy of the list entry (subsection (2)).
275. Under subsection (3), a copy of a list entry served under this section is a local land charge. A [local land charge](#) will alert a purchaser to the restrictions imposed on the use of the land by the listing of the building.
276. Subsections (4) and (5) require relevant local authorities to keep available for public inspection copies of the list entries they are served with under this section and any list entries that remain up to date served under earlier Acts (subsection (4)(b)). In practice, authorities normally provide routine access to all up-to-date list entries via Cof Cymru, for example, by means of free internet access in public libraries and similar venues.

### ***Section 78 — Consultation before listing or de-listing building***

### ***Section 79 — Interim protection pending decision whether to list building***

### ***Schedule 7 — End of interim protection or temporary listing for buildings***

277. [Section 78](#) puts in place a formal structure for consultation on the Welsh Ministers’ proposals to list or de-list a building. It makes provision for inviting the persons identified in subsection (2) to make written representations on the proposed amendment to the list to the Welsh Ministers.
278. The service of a notice of a proposal to amend the list by adding a building will trigger interim protection under section 79. In that case, section 78(3)(b) requires the notice

to explain the effect of interim protection and specify the date upon which interim protection takes effect.

279. Any building being considered for listing by the Welsh Ministers, unless already a scheduled monument (section 79(7)), will enjoy interim protection under section 79 from the beginning of the day specified in the notice served under section 78(1).
280. [Section 79\(2\)](#) provides that this Act (except certain specified sections) and the 1990 Planning Act apply to any building under interim protection as if it were a listed building. It will, therefore, be an offence to undertake works that alter its character without listed building consent and the full range of enforcement powers in Chapter 4 will be available to a planning authority or the Welsh Ministers in the event of unauthorised works. Section 118, however, does not apply to a building under interim protection. Interim protection will afford protection to a building during the consultation period, for example, from an owner who could otherwise have an incentive to deliberately damage or destroy the historic asset in an effort to undermine the protection that listing would otherwise have provided by making its listing pointless.
281. Subsection (4) requires the Welsh Ministers to publish a list of buildings subject to interim protection. At the time of writing these notes, the list appears on the “Statutory listed building consultation notices” page in the “Listed buildings” section of the Cadw website. Buildings under interim protection also appear as a distinct category of assets on Cof Cymru.
282. Interim protection ends when the Welsh Ministers decide whether or not to list a building and serve notice on every owner and occupier and the relevant local authorities under section 77(1) or section 79(5)(b).
283. [Schedule 7](#) provides for the effect of the end of interim protection under section 79(5)(b). It also makes provision about the effect of temporary listing coming to an end without the building being listed under section 85(4).
284. [Paragraph 2](#) of Schedule 7 establishes that, even after the end of interim protection or temporary listing, a person will remain liable to be prosecuted and punished for an offence under the Act committed while the building was protected.
285. On the termination of interim protection or temporary listing, paragraphs 3 to 6 make provision for:
- a. the cessation of the effect of listed building consents, temporary stop notices, and enforcement notices; and
  - b. the lapse of any proceedings associated with any of the above or an application for an injunction related to the building.
286. However, paragraph 5(3) allows for the continued application of section 132(1) to (6) to permit the recovery of costs reasonably incurred by a planning authority when taking steps specified in an enforcement notice on a building then under interim protection or temporary listing.

### ***Section 80 — Compensation for loss or damage caused by interim protection***

287. Under this section, if the Welsh Ministers decide not to list a building and serve notice under section 79(5)(b) ending interim protection, any person with an interest in the building when interim protection took effect is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for losses or damage directly attributable to the interim protection.
288. Subsection (5) establishes that, in those cases where interim protection follows on from temporary listing, the compensation claims made to the Welsh Ministers may include losses or damage attributable to or suffered as a result of the temporary listing.

289. [Sections 202](#) and [203](#) make additional provisions about claims for compensation under this Act (see paragraph 45 above).

***Section 81 — Review of decision to list building***

***Section 82 — Supplementary provision about reviews***

***Schedule 2 — Decision on review by person appointed by the Welsh Ministers***

290. Where the Welsh Ministers list a building, section 81 requires them to give any owner or occupier of the building an opportunity to request a review of their listing decision.
291. Subsection (2) provides that the ground for review is that the building is not of special architectural or historic interest. Subsection (6) provides that the Welsh Ministers may make regulations to specify other grounds in the future.
292. Under subsection (3), the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of Planning and Environment Decisions Wales. However, subsection (4) provides that the Welsh Ministers may make regulations to specify descriptions of cases that they will review and decide themselves, instead of appointing a person to do so.
293. [Section 82](#) makes administrative and procedural provision for the reviews provided for in section 81. It is supplemented by Schedule 2, which sets out the functions of persons appointed by the Welsh Ministers to carry out reviews. Schedule 2 also applies to reviews of decisions to add monuments to the schedule.

***Section 83 — Service of temporary listing notice***

***Section 84 — Temporary listing in urgent cases***

294. [Section 83](#) allows a planning authority to confer temporary listed status on an unlisted building that it considers to be:
- a. of special architectural or historic interest, and
  - b. in danger of demolition or alteration that would affect that interest.
295. This section and section 84 provide planning authorities with powers to take prompt action, informed by their local knowledge, to protect historic assets that they consider to be of special architectural or historic interest. It allows works to the building to be regulated while it is under consideration for listing by the Welsh Ministers.
296. [Section 83\(2\)](#) provides for the service of a temporary listing notice by a planning authority. The notice was previously termed a “building preservation notice” in section 3A of the 1990 Listed Buildings Act.
297. Subsections (2) and (3) detail the required recipients and contents of a temporary listing notice. Subsection (3)(a)(ii) establishes that the temporary listing of a building must be accompanied by a request to the Welsh Ministers to consider the building for listing.
298. Once the requisite notice has been served on every owner and occupier of a building, its effect is that the same restrictions and requirements apply to a building under temporary listing as to a building under interim protection (subsection (4)) — see paragraph 280 above.
299. Subsection (6) excludes scheduled monuments and exempt religious buildings (as defined in section 156(1)) from the scope of temporary listing.
300. [Section 84](#) provides that where a planning authority considers it urgent to protect a building through temporary listing, it may give notice of the temporary listing by

attaching the notice to, or near to, the building instead of serving it on each owner and occupier.

### ***Section 85 — End of temporary listing***

#### ***Schedule 7 — End of interim protection or temporary listing for buildings***

301. **Section 85(1)–(3)** identifies three ways in which temporary listing may come to an end. It may:
- a. expire at the end of six months from the day it took effect unless ended earlier;
  - b. be superseded and replaced by interim protection if the Welsh Ministers serve notice under section 78(1) of a proposal to list the building; or
  - c. if the Welsh Ministers give notice to the planning authority that they do not intend to consult on a proposal to list the building, end on the day specified in the notice.
302. **Schedule 7**, which is introduced by subsection (4), makes provision about the effect of interim protection or temporary listing coming to an end without the building being listed; it has already been discussed in paragraphs 283–6 above.

### ***Section 86 — Compensation for loss or damage caused by temporary listing***

303. If a temporary listing comes to an end after six months or because the Welsh Ministers decide not to consult on a proposal to list the building, any person who had an interest in the building when the temporary listing took effect is entitled, on making a claim for compensation to the planning authority in whose area the building is situated, to be paid compensation by it for losses or damage directly attributable to the temporary listing (section 86(1)–(3)).
304. If, however, interim protection follows on from temporary listing and the Welsh Ministers eventually decide not to list the building, compensation would be available under section 80 instead.
305. **Sections 202** and **203** make additional provisions about claims for compensation under this Act (see paragraph 45 above).

### ***Section 87 — Certificate that Welsh Ministers do not intend to list building***

306. Under section 87, the Welsh Ministers may, on the application of any person, issue a certificate stating that they do not intend to list a particular building. The effect is that for 5 years the Welsh Ministers may not list the building and the relevant planning authority may not list the building temporarily. Such an application equates to a person asking the Welsh Ministers to consider the building for listing and if the building is judged not to meet the listing criteria a certificate may be issued. This provides certainty for a person wishing to develop or undertake works to a building, or to develop the land on which it is situated, that the building will not be listed for the next 5 years.

### ***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.
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.

### ***Chapter 3 — Listed building partnership agreements***

409. This Chapter provides for the making of a listed building partnership agreement. This is a voluntary agreement between a planning authority or the Welsh Ministers, a listed

building owner and other parties for the long-term conservation and management of one or more listed buildings. A listed building partnership agreement may grant listed building consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable scheduled monument partnership agreements in Part 1, Chapter 4.

410. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for listed buildings. The guidance at the time of writing these notes, *Heritage Partnership Agreements in Wales* (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

### ***Section 113 — Listed building partnership agreements***

411. **Section 113** sets out the possible parties to a listed building partnership agreement and what such an agreement may do.
412. Subsections (1) and (3) establish that an owner of a listed building or part of a listed building may enter into a listed building partnership agreement with the planning authority in whose area the building is situated or the Welsh Ministers.
413. In practice, listed building partnership agreements will routinely be made between owners and their respective planning authorities. Although agreements between owners and the Welsh Ministers are permitted by the legislation, at the time of writing they are only likely to be made when local authorities are the owners of the listed buildings. While a planning authority may, in some situations, determine its own listed building consent applications (see paragraph 362 above), it might still wish to enter a listed building partnership agreement with the Welsh Ministers to benefit from the long-term efficiency savings that an agreement can offer.
414. Other persons with an interest in the listed building, as identified in subsections (2) and (4), may also be parties to the agreement.
415. Subsection (6) provides that a listed building partnership agreement may grant listed building consent under section 89(1) for specified works for the alteration or extension of the listed building to which it relates. This power is used to grant permission for beneficial works for the conservation and management of the listed building. The works specified will need to be negotiated and agreed by the parties to the agreement and conditions may be attached to the consent (and subsection (7) provides that any such conditions must be specified in the agreement).
416. An agreement cannot, however, grant consent for the demolition of a listed building. Demolition works would require separate listed building consent obtained through the routine application procedure.
417. A listed building consent contained in a listed building partnership agreement is not subject to the provisions in section 98 about when works must start. A consent for works that have not been started will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
418. Subsection (8) sets out a wide range of matters relating to maintenance, conservation and management that the parties may also agree to include in a listed building partnership agreement. Paragraph (a) permits the parties to specify works that in their view would or would not affect the character of a listed building as a building of special architectural or historic interest and consequently would or would not require listed building consent. This would allow the parties to identify clearly routine maintenance works or like-for-like repairs (with details of methods and materials) that could proceed without consent since there would be no loss of historic fabric or effect on the character of the building. Equally, the parties would be able to outline more substantial works —

for instance, the restoration or reconstruction of elements of the listed building, or major additions or alterations — which, due to their complexity or sensitivity, could not be adequately provided for in a listed building partnership agreement. Those works would require the full consideration of the separate listed building consent procedure (sections 90 to 98).

### ***Section 114 — Further provision about listed building partnership agreements***

419. Subsections (1) and (2) of section 114 provide that listed building partnership agreements must be in writing and specify essential elements of an agreement.
420. Subsection (2)(e) requires a listed building partnership agreement to make provision for its variation. Since an agreement will last for years, it is likely that adjustments will be required. The parties, therefore, must incorporate in the agreement agreed working arrangements for approving necessary variations into the agreement. Depending on the nature of the variations, they may be subject to the consultation and publicity requirements prescribed by the regulations under subsection (5).
421. The requirement in subsection (2)(f) provides for a mechanism for a negotiated termination to a listed building partnership agreement should it no longer serve the mutual interests of the parties or has, for some other reason, broken down. This is distinct from any termination of an agreement or a provision of an agreement by order of a planning authority or the Welsh Ministers as provided for under section 115.
422. When considering whether to make or vary a listed building partnership agreement that incorporates listed building consent, a planning authority or the Welsh Ministers must have the same special regard to the desirability of preserving the building, its features and its setting as when granting or refusing listed building consent under section 96. See the discussion in paragraph 336 above.
423. Subsection (7) provides that a listed building partnership agreement will only be binding on the parties to the agreement. Future owners of a listed building will not be bound by an agreement, nor will they be able to benefit from any listed building consent granted by an agreement. Unless all parties agree to continue an agreement with a new owner, a listed building partnership agreement will, therefore, cease to have effect with a change of ownership.

### ***Section 115 — Termination of agreement or provision of agreement***

#### ***Schedule 10 — Procedure for orders terminating listed building partnership agreements***

424. **Section 115(1)** allows a planning authority to make an order to terminate a listed building partnership agreement to which it is a party or any provision of such an agreement. Subsection (2) gives the Welsh Ministers comparable powers, but they do not have to be party to an agreement. Termination by order is only likely to occur in exceptional cases — if, for example, works unauthorised by the agreement take place and relations between the parties break down to such an extent that negotiated termination becomes impossible.
425. A termination order may be made at any time before the conclusion of the affected works, but it will have no effect on the consent for works already completed.
426. **Schedule 10** puts in place the procedures for making the termination orders. These procedures are derived from those for making an order to modify or revoke listed building consent in Schedule 8.
427. **Part 1** of the Schedule makes provision about termination orders made by planning authorities. Paragraph 1(1) requires that a planning authority's termination order must be confirmed by the Welsh Ministers before it will take effect.

428. [Paragraph 1\(2\)](#) requires a planning authority that has submitted an order to the Welsh Ministers for confirmation to give notice of the submission to:
- a. the other parties to the agreement;
  - b. any other person occupying the listed building to which the agreement relates under a lease that has at least two years to run; and
  - c. any other person the authority thinks will be affected by the order.
429. [Paragraph 1\(2\)\(b\)](#) has been framed to require consultation with longer-term occupants of a listed building that will be affected by a termination order. More transient occupiers, for instance students in a university hall of residence, will not be captured by the provision.
430. 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. If a hearing is requested, each planning authority that is party to the agreement will be given the opportunity to attend ([paragraph 1\(3\)–\(5\)](#)).
431. [Part 2](#) of the Schedule makes provision about termination orders made by the Welsh Ministers. Under [paragraph 2\(1\)](#) the Welsh Ministers must serve notice of the proposed termination order on the parties to the listed building partnership agreement and the other individuals listed in [paragraph 430](#) above.
432. Before the Welsh Ministers can make the order, the recipients of the notice must be afforded the opportunity to appear before and be heard by an appointed person. The procedures in [paragraph 2\(2\)–\(4\)](#) mirror those in [paragraph 1\(3\)–\(5\)](#).

### ***Section 116 — Compensation where agreement or provision is terminated***

433. If a listed building partnership agreement, or a provision of such an agreement, is terminated by order and a person suffers loss or damage as a direct result, [section 116](#) provides for the payment of compensation.
434. These provisions are similar in many respects to those providing for compensation if listed building consent is modified or revoked by order under [section 108](#). Just as in that earlier section, [section 116\(3\)](#) provides that expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters. Such other matters might include, but not be limited to, site surveys and investigations, the preparation of heritage impact statements and the production of detailed specifications of methodologies and materials.
435. The compensation claim must be made in writing either to the planning authority that made the order, or, in the case of an order made by the Welsh Ministers, to the planning authority in whose area the listed building is situated. It must be made within six months of the termination order taking effect ([subsections \(5\) and \(6\)](#)).
436. If a planning authority is liable to pay compensation under [section 116](#), [section 171\(3\)](#) (a) permits the Welsh Ministers to contribute towards the payment of the compensation in certain circumstances. [Section 171\(4\)–\(6\)](#) allows the Welsh Ministers to direct any other authority that was or is party to the listed building partnership agreement to defray some or all of the compensation. This acknowledges that a complex agreement — for instance, one for listed buildings associated with a transport corridor— could involve a number of local authorities. While a single authority or the Welsh Ministers might serve the termination order, it might be reasonable to share the burden of compensation between some or all of the other authorities party to the agreement. However, under [section 171\(6\)](#) the Welsh Minister may only give such a direction if they have consulted with all the planning authorities that were or are party to the agreement.

437. [Sections 202 and 203](#) make additional provisions about claims for compensation under this Act (see paragraph 45 above).

#### ***Chapter 4 — Enforcement of controls relating to listed buildings***

438. Listed buildings are nationally important and irreplaceable historic assets. It is a criminal offence to carry out unauthorised works to a listed building, which can destroy the historic fabric (meaning the historic evidence provided by the physical elements of the building) and damage the special interest of listed buildings. This Chapter sets out a number of offences relating to listed buildings, including the offences of carrying out unauthorised works, failing to comply with a condition of a listed building consent (section 117) or deliberately damaging a listed building (section 118).
439. This Chapter also provides planning authorities with the powers to issue a temporary stop notice to put an immediate halt to works that either breach section 88 or a condition of a consent (sections 119 to 122).
440. The Chapter also provides the power for a planning authority to issue enforcement notices (section 123). Such notices may be issued if a planning authority considers that works which involve a breach of section 88, or of a condition subject to which listed building consent has been granted, have been or are being carried out in relation to a listed building in its area. The enforcement notice can be issued, if appropriate, having regard to the effect of the works on the character of the building as a building of special architectural or historic interest. An enforcement notice must specify steps to be taken to remedy the effects of unauthorised works. Section 124 provides for the service and taking effect of an enforcement notice, and section 127 establishes a right to appeal against an enforcement notice. The Chapter provides arrangements for compliance with enforcement notices and a power for the Welsh Ministers to issue enforcement notices (sections 130 to 134).
441. Finally, the Chapter provides for injunctions to restrain an actual or expected breach of section 88 or an actual or expected failure to comply with a condition of listed building consent for works to a listed building (section 135).

#### ***Section 117 — Offence of carrying out unauthorised works or breaching condition of consent***

442. [Section 117\(1\)](#) makes it an offence for a person to carry out, or cause to be carried out, works in relation to a listed building in breach of section 88. This includes any works that would affect its character as a building of special architectural or historic interest.
443. If listed building consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing works to be carried out.
444. For the purposes of this section, a “person” may be anyone who undertakes works to a listed building, be that an owner or occupier of a building, a contractor or subcontractor or other third party.
445. If works are undertaken to a listed building without authorisation or in breach of a condition subject to which listed building consent has been granted, a person commits an offence if they:
- a. carry out those works personally, or
  - b. instruct or employ someone to undertake them.
446. Consequently, both an owner and a builder instructed by the owner to undertake unauthorised works could be guilty of an offence.
447. Subsection (4) provides a person with a defence for an offence under this section if works were undertaken to address urgent health and safety needs or for the preservation

of the building. However, the defence is only available where the works were limited to the minimum measures immediately necessary to secure health and safety or the preservation of the building, and notice was given to the planning authority in whose area the building was situated, with detailed justification for the works, as soon as reasonably practicable.

448. Subsection (5) provides a person with a defence for an offence under this section relating to a building under interim protection where the person proves that they did not know, and could not reasonably have been expected to know, that the building was subject to interim protection. Where the defence is raised by a person on whom a notice of interim protection should have been served, it is for the prosecution to prove that the notice was served on the person.
449. Information on buildings under interim protection should be readily available. Section 78 requires the Welsh Ministers to serve notice if they propose to add a building to the list. The notice, which must be served on every owner and occupier of the building amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of buildings under interim protection is published on the Cadw website in accordance with section 79(4)(a) (see paragraph 281 above) and Cof Cymru also displays buildings under interim protection.
450. Subsections (6) and (7) detail the levels of penalties a person guilty of an offence under this section is liable to, whether on summary conviction or conviction by indictment. Since unauthorised works to a listed building may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have gained or appears likely to gain as a result of the offence, when determining the amount of any fine to be imposed (subsection (7)).

### ***Section 118 — Offence of intentionally damaging listed building***

451. [Section 118\(1\)](#) provides that a person commits an offence, if, with the intention of damaging a listed building, such a person does anything, or permits anything to be done that causes or is likely to result in damage to that building, and were it not for this subsection, the person would have been entitled to do or permit such action. A person entitled to do or permit an action to a listed building in this case would include an owner, occupier or someone employed by them.
452. The manner in which the offence under this section has been limited to persons who are entitled to do or permit works to a listed building, distinguishes it from the more broadly framed offence under section 1(1) of the [Criminal Damage Act 1971 \(c. 48\)](#) (“the 1971 Act”). The offence in the 1971 Act applies to any person who “without lawful excuse destroys or damages any property belonging to another”. Another important difference between the two offences is that intention must be proved for an offence under this section, while recklessness as to whether damage is caused is sufficient for the offence under section 1 of the 1971 Act.
453. Subsection (3) provides that a person found guilty of an offence under subsection (1) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
454. If, on being convicted of an offence under this section, the person also fails to take reasonable steps that are necessary to prevent damage or any further damage from taking place to the building, the person is liable on summary conviction to further fines for each day on which the failure continues (subsections (4) and (5)).
455. [Section 118](#) does not apply to a building subject to interim protection or temporary listing — see sections 79(2) and 83(4).



***Section 119 — Power of planning authority to issue temporary stop notice***

456. **Section 119** gives a planning authority the power to issue a temporary stop notice to put an immediate halt to any or all works to a listed building that they consider to be unauthorised or to contravene a condition of a granted listed building consent. The planning authority may only issue a notice if it considers that the works ought to be stopped immediately, having regard to the effect of the works on the character of the building as one of special architectural or historic interest.
457. Subsections (2) to (4) specify the required content of a temporary stop notice and make provision for display of a notice. The works specified in the temporary stop notice need not include all of the works that are underway. For example, a planning authority may wish to stop the alteration or removal of a particular feature, such as a window, which is part of a wider programme of works, but may be satisfied that the remainder of the programme of works has been authorised by listed building consent or consists of simple repairs that will not affect the character of the building.
458. Subsection (3) requires the planning authority to display a copy of the notice on the listed building and the copy must specify the date on which it is first displayed. Subsection (4) however provides that if it is not reasonably practicable to display a copy of the notice on the building or its display on the building might cause damage, the authority may instead display a copy in a prominent place as near to the building as is reasonably practicable.
459. While the planning authority may serve copies of the notice on interested parties under subsection (5), only display of a copy of the notice as specified in subsection (3) is needed for the immediate suspension of the specified works.

***Section 122 — Compensation for loss or damage caused by temporary stop notice***

460. **Section 122** provides that any person with an interest in a listed building may, in limited circumstances, be entitled to compensation from the planning authority for loss or damage directly attributable to the effect of a temporary stop notice.
461. Subsection (1) provides that compensation is only payable where:
- a. the works specified in the notice did not breach section 88 at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
  - b. the works specified in the notice did not contravene a condition of a listed building consent at the time the notice took effect; or
  - c. the planning authority withdrew the temporary stop notice after it took effect.
462. A planning authority might withdraw a temporary stop notice after it takes effect if, for example, it discovers that the notice was displayed in error because works were not unauthorised or the notice was brought into effect for the wrong property.
463. Subsection (2) further provides that no compensation is payable if the planning authority withdrew the temporary stop notice after listed building consent was granted that would allow the works specified in the notice to proceed. This exception applies only if the consent was granted after the temporary stop notice had taken effect; if the consent was granted first, compensation may be payable.
464. If a planning authority is liable to pay compensation under section 122, 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.
465. **Sections 202 and 203** make additional provisions about claims for compensation under this Act (see paragraph 45 above).

**Section 123 — Power of planning authority to issue enforcement notice**

466. **Section 123** gives a planning authority the power to issue an enforcement notice to require steps to be taken where it considers that unauthorised works have been carried out on a listed building. The planning authority must consider it appropriate to issue the notice, having regard to the effect of the works on the character of the building as one of special architectural or historic interest. The planning authority, accordingly, may weigh up factors such as the severity of the damage to the listed building and the likelihood of future harm, the impact of the damage on the listed building's character and significance, the scope for negotiation and cooperative solutions and the availability and suitability of other legal remedies.
467. An enforcement notice must identify the alleged breach and require steps to be taken for any or all of the following purposes:
- a. restore the listed building to its condition before the unauthorised works took place;  
  
The steps specified would be likely to include undertaking appropriate recording and investigation of the damaged area to recover and record historical evidence before further specified operations proceed.
  - b. alleviate the effect of the works, if restoration is not reasonably practicable or desirable; or  
  
In the event of serious or extensive damage to a listed building, restoration might be unviable and could, in fact, cause further harm to the special interest of the listed building. In such a case, the planning authority would specify steps to stabilise the building in its altered state to protect it and the special interest it contains for the future.
  - c. put the building in the condition in which it would have been if the terms and conditions of a granted listed building consent had been complied with.

**Section 124 — Service and taking effect of enforcement notice**

468. **Section 124** sets out the requirements for service of a copy of an enforcement notice and when a notice takes effect.
469. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. Should an appeal against the notice be made to the Welsh Ministers, section 127(4)(a) provides that the notice will not take effect until the appeal is finally determined or withdrawn. However, should an appeal against a decision of the Welsh Ministers on an enforcement notice be made to the High Court, section 184(5) provides that the Court may order that the enforcement notice is to have effect, either in full or to the extent specified in the order.
470. Subsection (3) provides that an enforcement notice can set different periods for taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a building. For instance, a phased series of steps might be set to achieve the satisfactory restoration or stabilisation of a building damaged by unauthorised works.
471. Subsection (4) requires a copy of the notice to be served on every owner and occupier of the building and any other person who has an interest in the building that the authority considers to be materially affected by the notice.
472. Subsection (5) requires a copy of the notice to be served before the end of 28 days after the day on which it was issued, and at least 28 days before the date specified in the notice as the date on which it is to take effect. "Issued" here means when the enforcement notice was agreed by the relevant committee or delegated officer of the planning authority.

**Section 126 — Effect of granting listed building consent on enforcement notice**

473. [Section 126](#) provides for a situation where, after an enforcement notice is issued, listed building consent is granted under section 89(2) to authorise works to which the notice relates.
474. In practice, consent under section 89(2) is only granted in exceptional circumstances and when the works undertaken have been for the benefit of the listed building.
475. Subsection (2) provides that requirements of the notice that are inconsistent with the new consent cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failure to comply with an enforcement notice (section 133) is a separate offence from carrying out unauthorised works (section 117) or of intentionally damaging a listed building (section 118) and proceedings for the offences may be pursued independently.

**Section 127 — Right to appeal against enforcement notice**

476. [Section 127](#) permits anyone who has an interest in the listed building to which an enforcement notice relates to appeal to the Welsh Ministers against the notice. This includes owners, lessees and tenants, official receivers and mortgagees and other lenders.
477. Subsection (1)(b) also provides that any person, who by virtue of a licence occupies the building on the day on which the notice is issued and continues to occupy it when the appeal is made, may appeal to the Welsh Ministers against an enforcement notice.
478. Subsection (2) lists the permissible grounds for an appeal.
479. Ground (a) allows the listing of the building to be challenged. An appellant resorting to ground (a) would need to demonstrate that the building is not of special architectural or historic interest. In making the case, consideration must be given not only to the building itself, in its condition prior to any unauthorised works taking place, but also to any contribution made by associated structures or artificial objects in the curtilage of the building. If an appeal on this ground is successful, the Welsh Ministers will delist the building (see section 128(3)(c)).
480. Ground (b) permits an appellant to challenge an enforcement notice by contending that the matters alleged to have constituted a breach of section 88 or a condition of a listed building consent never took place.
481. Ground (c), on the other hand, allows an appellant to argue that those matters, if they occurred, did not constitute a breach. An appeal could be made, for example, if works took place, but they did not affect the character of the building as one of special architectural or historic interest. Ground (c) will also accommodate appeals arguing that a breach did not occur because the building in question is not listed or that what has been listed is not a building. Such situations were considered and recognised as legitimate grounds for appeal in *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] 1 WLR 2206.
482. Ground (d) allows an appeal on the basis that the works to which the enforcement notice relates were urgently necessary for health and safety or the preservation of the building, those objectives could not be secured by works of repair or to provide temporary support or shelter and the works undertaken were limited to the minimum measures necessary.
483. Ground (e) provides for circumstances in which the appellant maintains that listed building consent should be granted for the unauthorised works to which an enforcement notice relates or a condition of a granted consent should be removed or replaced. Such an appeal might be made if the works in question had a neutral or beneficial effect on the character of the listed building.

484. Ground (f) permits an appeal if a notice was not served on a person as required under section 124. That section requires service on every owner and occupier and any other person with an interest in the building whom the planning authority considers will be materially affected by the notice. However, section 128(4) establishes that if the failure to serve an enforcement notice on a person is a ground for an appeal, the Welsh Ministers may ignore the fact if neither the appellant nor that person has been substantially prejudiced by the failure.
485. Ground (g) provides for an appeal on the ground that steps required in an enforcement notice would not serve the purpose of restoring the character of a building. This would allow an appellant to challenge, for example, an enforcement notice that required the reconstruction of a demolished feature using all of the broken pieces with resulting joins and cracks. The appellant might argue that a faithful replica of the feature, without the distracting joins and cracks, would more fully restore the character of the building.
486. Ground (h) provides that an appeal can argue that remedial steps detailed in the notice under section 123(3) exceed what is necessary to restore the listed building, alleviate the effect of the breach, or put the building into the condition it would have been in if conditions attached to a consent had been fulfilled.
487. Ground (i) allows for an appeal on the basis that the period within which the notice requires any step to be taken is unreasonably short. Successful appeals on ground (i) almost invariably lead to enforcement notices being varied to allow for longer periods in which to carry out the specified works and are unlikely to result in notices being quashed.

### ***Section 128 — Determination of appeal***

488. **Section 128** provides Welsh Ministers with the power to determine an appeal against an enforcement notice.
489. Subsection (1) provides that the Welsh Ministers may correct any defect, error or misdescription in the notice to which the appeal relates, or vary the terms of the enforcement notice, if they are satisfied that such steps will not cause injustice to either party to the appeal.
490. Subsection (6) clarifies that the decision of the Welsh Ministers on the appeal is final.

### ***Section 130 — Order to permit steps required by enforcement notice***

491. **Section 130** allows an owner of land to apply for an order from a magistrates' court requiring another person who has an interest in the land to allow the owner to take steps required by an enforcement notice. If it is satisfied that the owner is being prevented from taking the required steps, the court may make such an order.
492. This provides an important legal recourse for an owner of land, since section 133(1) places any liability for an offence for a failure to comply with an enforcement notice on a person who is at the time an owner of the listed building to which the notice relates.

### ***Section 131 — Power to enter land and take steps required by enforcement notice***

493. **Section 131(1)** provides for a situation in which a step required by an enforcement notice has not been taken within the time prescribed. In such a case, the planning authority may enter the land to which the enforcement notice relates at any reasonable time and take that step. This allows necessary conservation works to secure the special interest of the listed building that are detailed in the enforcement notice to take place in a timely fashion.
494. Subsections (2) and (3) provide that it is an offence to intentionally obstruct a person exercising the power under subsection (1) and that a person found guilty of such an

offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### ***Section 132 — Recovery of costs of compliance with enforcement notice***

495. **Section 132** provides for the recovery from any owner of reasonable costs incurred by a planning authority after exercising the power in section 131 and entering land to take the steps required to comply with an enforcement notice.
496. Subsections (2) and (3) provide for the recovery of such costs from an owner of the land acting as an agent or trustee for another person, or from that other person, or from a combination of the two.
497. The section also provides for the recoverable costs to be a local land charge until such time as they are recovered (subsections (5) and (6)).
498. Finally, the section provides for certain circumstances whereby the planning authority may recover some or all of its costs by selling materials recovered while undertaking the steps required following a failure to comply with an enforcement notice. If there is any surplus after deducting the recoverable costs, the remaining proceeds must be paid to the person who owned the materials (subsections (7) and (8)).

### ***Section 133 — Offence of failing to comply with enforcement notice***

499. **Section 133** establishes that if, after the end of the period prescribed in an enforcement notice, a required step has not been taken, an owner of the listed building to which the notice relates will be guilty of an offence. This would be an offence in addition to the offence of carrying out the unauthorised works under section 117.
500. Subsection (2) provides that an offence under this section may be charged by reference to a day or a longer period, and that a person may be convicted of more than one offence in relation to the same enforcement notice by reference to different periods.
501. Subsection (3) sets out the possible defences available under this section. It is a defence for a person to prove that:
- a. the person did everything that could be expected to be done to secure that the required steps were taken, or
  - b. the person was not served with a copy of the notice and so was unaware of its existence.
502. Subsection (4) provides that the penalty for the offence of failing to comply with an enforcement notice, whether on summary conviction or conviction by indictment, is an unlimited fine.
503. Since deliberate damage to a listed building may be prompted by the prospect of financial gain, subsection (5) requires the court to have regard to any financial benefit the person convicted may have gained or appears likely to gain as a result of the offence, when determining the amount of any fine to be imposed.

### ***Section 135 — Injunction to restrain unauthorised works or failure to comply with condition of consent***

504. **Section 135** allows a planning authority to apply to the High Court or the county court for an injunction to restrain actual or expected unauthorised works or actual or expected works that fail to comply with a condition of a listed building consent.
505. Subsection (2) establishes that a planning authority may apply for an injunction irrespective of whether it has used or proposes to use any other powers provided by this Part — for instance, an enforcement notice (section 123) or urgent works (section 144).

506. The court may grant the injunction on any terms it considers appropriate to restrain the breach and issue it against a person whose identity is unknown (subsections (3) and (4)). This will make it easier to obtain an injunction in timely fashion if it is needed to put a halt to works that threaten to damage the special architectural or historic interest of a listed building.

### ***Chapter 5 — Acquisition and preservation of buildings of special interest***

507. **Chapter 5** provides various powers for the acquisition and preservation of historic buildings of special interest. They offer a suite of measures that may be used when listed buildings fall into disrepair, either through a lack of investment or will from owners, or, in some cases, through deliberate neglect or abandonment. In most cases, the powers are exercisable by the Welsh Ministers and either the relevant planning authority or the local authority.
508. **Sections 137 to 142**, for instance, provide for the compulsory acquisition of a listed building by a planning authority (with authorisation from the Welsh Ministers) or by the Welsh Ministers themselves. These compulsory powers may be needed if there is no alternative but to acquire a listed building that has fallen into disrepair, so other arrangements can be made for its preservation. On the rare occasions when compulsory acquisition is considered necessary, the acquiring authority must first serve a repairs notice to provide every owner with a final opportunity to undertake reasonable steps for a building’s preservation (section 138).
509. Compensation will be payable to an owner following a compulsory acquisition, but the Chapter allows an acquiring authority to make a direction for minimum compensation if it is satisfied that a building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site. It also sets out the procedures any person with an interest in the building would need to follow to challenge such a direction (sections 140 and 141).
510. Local authorities or the Welsh Ministers may also undertake urgent works necessary for the preservation of a listed building and may take measures to recover the costs of these works, including through a local land charge (sections 144 to 146). In practice, urgent works tend to be temporary interventions, such as shelters or covers, to provide immediate protection from wind and rain damage. They are often intended to allow time to develop and agree long-term conservation plans for the building.
511. The Chapter provides further steps for the preservation of listed buildings in disrepair by giving the Welsh Ministers powers to make regulations that may, in particular, provide for a “preservation notice” requiring owners of a listed building to carry out works to secure its proper preservation (section 147).
512. The Chapter also enables local authorities and the Welsh Ministers to offer financial support for the maintenance and repair of historic buildings and gardens, and to recover funds in certain circumstances (sections 148 to 150).
513. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings that have fallen into disrepair. The guidance at the time of writing these notes, *Managing Listed Buildings at Risk in Wales* (2018), outlines the roles and responsibilities of owners, the Welsh Government and local authorities when managing listed buildings that have fallen into disrepair. It shows how policies and programmes to manage listed buildings at risk can be successful.

### ***Section 136 — Power of planning authority to acquire building by agreement***

514. **Section 136** provides that a planning authority may acquire by agreement any building that is wholly or mainly in Wales that it considers to be of special architectural or historic interest. While such a building may be listed, it is not necessary. The acquiring

planning authority must only be satisfied that the building is “of special architectural or historic interest”.

515. The acquisition of a building might be motivated by a local authority’s concern for its immediate preservation, but it could equally be prompted by other aims, for instance securing the future of a building of special interest and providing public access.
516. Associated land may be included in the acquisition provided the conditions in subsection (2) are met.
517. Subsection (3) applies standard provisions governing the exercise of compulsory purchase from Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#), so far as they are relevant, to an acquisition by agreement.
518. Subsection (4) provides that, where lessees are entitled to compensation for certain damage because of the execution of works, it includes damage from works carried out under section 203 of the Housing and [Planning Act 2016 \(c. 22\)](#).

***Section 137 — Powers to acquire listed building compulsorily for purpose of preservation***

***Section 138 — Requirement to serve repairs notice before starting compulsory acquisition***

519. Together sections 137 and 138 provide for the compulsory acquisition of a listed building for the purpose of preservation by an acquiring authority — a planning authority or the Welsh Ministers. Section 138 sets out that the acquiring authority must first serve a repairs notice before employing the compulsory acquisition powers in section 137.
520. [Section 137](#) provides powers for the compulsory acquisition of a listed building if it is not being properly preserved. In order for these powers to be used, subsection (1) requires that two separate tests must be met in the estimation of the Welsh Ministers. First, the Welsh Ministers must consider that reasonable steps are not being taken for properly preserving a listed building. While reasonable steps encompass routine maintenance and repairs, they may also include other works that will vary from building to building, depending upon the nature of the structure and its current condition. Second, the Welsh Ministers must be satisfied that there is a compelling case in the public interest for the compulsory acquisition of the building for the purpose of preservation. In arriving at their conclusion, the Welsh Ministers may take into account the significance of the building (including its curtilage structures and objects), previous attempts to find a sustainable basis for the management of the building and the likelihood of negotiating a viable way forward, any other available legal solutions and the risk of loss or irreparable damage to part or all of the listed building. The Welsh Government’s *Compulsory Purchase Order (CPO) Manual* (2021), which is kept under review, provides guidance on compulsory acquisition.
521. If both tests are met, under subsection (2) the Welsh Ministers may authorise the planning authority in whose area the listed building is situated to undertake a compulsory acquisition of the building and associated land. The same subsection also allows the Welsh Ministers themselves to acquire the building and land compulsorily.
522. Subsection (3) sets out the conditions that must be met for associated land to be included in the compulsory acquisition. These are that the land includes, adjoins or is adjacent to the building, and that the Welsh Ministers consider that the land is required for the purposes of preserving the building or its amenities, accessing it or its proper control and management. Provision is made for including associated land in the compulsory acquisition because without such land it might not be possible to undertake effective conservation and management of the building.

523. Subsections (4) and (5) exempt from the operation of this section: any building which is also a scheduled monument, any exempt religious building (defined in section 156) and interests in Crown land (defined in section 207), except as specified.
524. Subsection (6) applies the 1981 Act to an acquisition under this section. The 1981 Act provides for compulsory acquisitions of land to be authorised by compulsory purchase orders and sets out the procedures for making those orders. They include provision for notice to be given of orders, for the consideration of objections, and for orders made by local authorities to be confirmed by Ministers.
525. **Section 138(1)** provides that an acquiring authority may not serve notice of an intended compulsory acquisition under the 1981 Act — the start of the formal process for compulsory acquisition — unless a “repairs notice” has been served on every owner of the building in question and two months have passed.
526. Under subsection (2), a repairs notice must specify the works the authority considers reasonably necessary for the proper preservation of the building. The works specified in the repairs notice might be those necessary for the preservation of the building in the state in which it was at the date of listing, rather than at the date of the notice. The service of the notice provides a final opportunity for every owner to take reasonable steps for the building’s preservation and forestall the compulsory acquisition process.
527. Subsection (2) also provides that the repairs notice must explain the effect of sections 137 to 141 of the Act and section 49 of the 1990 Listed Buildings Act. The effect of section 49 is that when calculating compensation it will be assumed that listed building consent would be granted for any works for the alteration or extension of the building or for its demolition under certain circumstances. This assumption will apply in addition to the general provisions about assessing compensation in the 1961 Act. However, the repairs notice will also need to explain the possibility of the payment of minimum compensation under section 140 if a building has been deliberately allowed to fall into disrepair.
528. Where a repairs notice is served on an owner, section 111(5) bars the owner from serving a purchase notice on the authority for three months or, if compulsory purchase proceedings are started within that three-month period, at any time until they are concluded.

### ***Section 139 — Application to stop compulsory acquisition***

529. When a compulsory purchase order for the acquisition of a listed building has been made by a planning authority (but not yet confirmed by the Welsh Ministers) or prepared in draft by the Welsh Ministers (but not yet put into effect), section 139 permits anyone with an interest in the building to apply to a magistrates’ court for an order to halt further progress on the compulsory purchase (subsection (2)).
530. Subsection (3) provides that the application must be made within 28 days after the day notice of the compulsory acquisition is served under the 1981 Act. The application would be made on the ground that reasonable steps had been taken for properly preserving the listed building, and subsection (4) requires the magistrates’ court to make the applied for order if it is satisfied that such steps have been taken. An appeal against the magistrates’ court decision can be made to the Crown Court (subsection (5)).

### ***Section 140 — Direction for minimum compensation where building deliberately allowed to fall into disrepair***

### ***Section 141 — Application for removal of direction for minimum compensation***

531. If an acquiring authority considers that a listed building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site, under section 140 a compulsory purchase order relating



to the building may contain a direction for minimum compensation. The effect of the direction is that the compensation payable for damage or loss caused by the acquisition will be assessed on the basis that planning permission and listed building consent would only be granted for the works which are necessary for the conservation of the building and its maintenance in a proper state of repair, and not for any development of the site. This would prevent any development value of the building/land from being considered as part of the compensation assessment.

532. According to section 210, the definition of “development” that applies to this Act is the definition in section 55 of the 1990 Planning Act. It is broadly framed and includes any building or other operations (including demolition and rebuilding) and any material change in the use of land.
533. [Section 141](#) allows any person with an interest in a listed building in relation to which a direction for minimum compensation has been made to apply to a magistrates’ court for an order for the direction to be removed. The application would be made on the ground that the building had not been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site. The application must be made within 28 days after the day of the service of the compulsory acquisition notice. An appeal against the decision of the magistrates’ court can be made to the Crown Court.

#### ***Section 142 — Ending of rights over land acquired compulsorily***

534. [Section 142\(1\)](#) provides that, on the completion of a compulsory acquisition of land under section 137, all private rights of way over the land and all rights to keep apparatus installed on the land cease. Moreover, the acquiring authority becomes entitled to any apparatus on, under or over the land.
535. Subsection (2), however, makes important exceptions in those cases where the right or apparatus is:
- a. a statutory undertaker’s,
  - b. conferred or installed for the purposes of an electronic communications code network, or
  - c. specified in a direction given by the acquiring authority.
536. Subsection (3) provides that subsection (1) is also subject to any agreement between the parties.
537. Subsections (4) and (5) provide that a person who suffers loss by the ceasing of a right or the transfer of apparatus is entitled to compensation from the acquiring authority, determined in accordance with the 1961 Act.

#### ***Section 143 — Management, use and disposal of building acquired under this Chapter***

538. [Section 143](#) makes provision for the management, use and disposal of buildings acquired under this Chapter. Subsection (1) makes provision about a building or other land acquired by a planning authority under this Chapter — whether by agreement or by compulsory acquisition. The authority may make any arrangements for the management, use or disposal of the building or land that it considers appropriate for the purpose of preserving the building or land. Subsection (3) makes similar provision in relation to a building or land acquired compulsorily by the Welsh Ministers, but permits them to make “any arrangements that they consider appropriate for the management, custody or use of the building or land” or dispose or deal with the building or land in any other way.

539. There are a number of options available to an authority acquiring a building under this Chapter. In the simplest arrangement, the authority would purchase the building, undertake the required repairs and either use it for its own purposes or sell it to a new owner. Alternatively, the authority could sell it unrepaired subject to a condition for its repair. For larger or more complex buildings, the acquiring authority might establish a “back-to-back” agreement, possibly with ownership passing to a building preservation trust or another charitable body set up with the specific objective to conserve the building that has been acquired.

#### ***Section 144 — Urgent works to preserve listed building***

540. [Section 144\(1\) to \(4\)](#) enables local authorities and the Welsh Ministers to carry out works that they consider urgently necessary for the preservation of listed buildings. These may include works to a building that is in residential use as long as it does not interfere unreasonably with that use. Such urgent works might include:
- a. relatively minor works to arrest a building’s decline and remove the need for more extensive work at a later date
  - b. works to provide temporary shelter or support for a building to keep it weatherproof or safe from collapse
  - c. actions to prevent vandalism or theft.
541. Urgent works are often intended to be short-term and designed to allow time to develop and agree long-term conservation plans for a building.
542. Subsections [\(5\)](#) and [\(6\)](#) provide that, prior to any urgent works being carried out, at least 7 days’ written notice must be given to every owner of the listed building and to every occupier (if any part of the building is in residential use). This notice must include a description of the proposed works.
543. Subsection [\(7\)](#) establishes that the powers in this section may not be used to carry out urgent works on: an building which is also a scheduled monument, an exempt religious building (defined in section 156) or a listed building on Crown land (defined in section 207).

#### ***Section 145 — Power to require owner to meet costs of preservation works***

544. If a local authority or the Welsh Ministers incur costs in undertaking urgent works to a listed building, section 145 allows them to serve a notice on any owner of the listed building requiring the owner to meet the costs of the works.
545. Subsection [\(2\)](#) makes specific provision for the recovery of costs for continuing expenditure involved in ongoing works to provide temporary support or shelter. Such expenditure might be required, for example, to pay for the hire of scaffolding and sheeting erected to keep a building weatherproof while long-term conservation plans are finalised.
546. Under subsection [\(3\)](#), an owner may, within 28 days after the day a notice of costs is served, complain in writing to the Welsh Ministers that:
- a. some or all of the works were unnecessary for the preservation of the listed building;  
  
The owner would have to be able to show that the works undertaken went beyond those needed for temporary support or shelter or the immediate preservation of the listed building, for instance that they incorporated precautionary or preventative works that were not strictly necessary.
  - b. temporary arrangements to provide support or shelter have continued for an unreasonable length of time;

For instance, an owner might complain about continuing expenditure on scaffolding and other materials used to provide temporary support and shelter if a more permanent solution for a listed building did not follow urgent works.

- c. the amount specified for recovery is unreasonable; or
  - d. the recovery of the amount would cause hardship to the owner.
547. Should the Welsh Ministers determine that the complaint is well-founded, they may, under subsection (5), reduce the amount that may be recovered or even decide that nothing may be recovered, if all the works were unnecessary.
548. Under subsection (6), an owner or local authority on whom a notice of the Welsh Ministers' determination is served may appeal to the county court within 28 days after the day the notice is served.

### ***Section 146 — Further provision about recovery of costs of preservation work***

549. [Section 146](#) makes additional provision about the recovery of costs incurred by a local authority or the Welsh Ministers in undertaking urgent works. The recovery of costs may, in practice, prove to be a protracted process, so subsection (1) provides that any recoverable sums carry interest at a rate specified in regulations made by the Welsh Ministers. Interest is applied from the time the notice requiring the owner to meet the costs of urgent works under section 145(1) becomes operative (subsection (7)) until all outstanding amounts are recovered by the relevant authority.
550. Under subsection (2), the costs and any interest are recoverable as a debt. A local authority, or, as the case may be, the Welsh Ministers, would, therefore, be able to employ all available mechanisms for the recovery of a debt, including a claim in the county court.
551. Furthermore, from the time the section 145(1) notice becomes operative, the costs and any accrued interest become a charge on the land on which the listed building stands. This is a legal charge — a debt secured by the property — and a local land charge and will remain in place until the costs and interest are entirely recovered (subsections (3) and (4)).
552. For the purposes of enforcing the charge, subsection (5) gives the recovering authority the same powers and remedies as a mortgagee by deed under the [Law of Property Act 1925 \(c. 20\)](#). The authority may appoint a receiver if one month or more has passed since the charge took effect. The recovering authority also has powers to lease or sell land to recover sums, but such measures are likely to be rarely used.

### ***Section 147 — Steps for preservation of listed buildings in disrepair***

553. [Section 147](#) enables the Welsh Ministers to make regulations to confer power on local authorities or the Welsh Ministers to take steps for the proper preservation of listed buildings that have fallen into disrepair. Subsection (2) allows the regulations to make particular provision for “preservation notices” requiring owners to undertake specified works to secure the proper preservation of such buildings. The regulations may also make provision for appeals against preservation notices and offences for failure to comply with the notices.
554. [Paragraph 186](#) of Schedule 13 (minor and consequential amendments and repeals) amends the [Regulatory Enforcement and Sanctions Act 2008 \(c. 13\)](#) (“the 2008 Regulatory Enforcement Act”) to enable civil sanctions to be imposed in respect of offences in regulations made under this section. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Regulatory Enforcement Act, for example, fixed monetary penalties or notices imposing requirements to take specified steps.

***Section 148 — Grant or loan by local authority for repair or maintenance of building***

***Section 149 — Recovery of grant made by local authority***

555. **Section 148** enables a county or county borough council, a National Park authority or a joint planning board (referred to collectively in this section as relevant local authorities) to offer financial support for incurred or planned expenditure for the repair and maintenance of historic buildings and associated gardens. Under the definition in section 210, a building for the purposes of section 148 may include plant or machinery forming part of the structure.
556. Under subsection (1), a relevant local authority may contribute towards any expenditure for the repair or maintenance of a listed building in or near its authority area or for the repair or maintenance of a building in its authority area that is not listed but that the authority considers to be of special architectural or historic interest. Subsection (2) further permits an authority to extend any funding to include a contribution to the maintenance of a garden associated with a historic building.
557. Subsection (3) allows a contribution under this section to be made by a grant or a loan. Subsections (4) and (6) provide that a relevant local authority may make loans and grants subject to conditions. For example, the authority might set a condition requiring the recipient to provide some form of public access to the building and/or an associated garden.
558. **Section 149** provides that where a condition of a grant made by a relevant local authority under section 148 is not complied with, the authority may recover the amount of the grant, or any part of it (subsection (2))
559. Subsections (3) to (5) provide that if the recipient of the grant disposes of all or part of the interest that they have in the property within 3 years of the day on which the grant was made, a relevant local authority may recover all or part of the grant.
560. These recovery powers might be used if, for example, a building's value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise.

***Section 150 — Grant by Welsh Ministers for repair or maintenance of building, garden etc.***

561. **Section 150(1)** enables the Welsh Ministers to make grants towards expenditure incurred, or to be incurred, in:
- a. the repair or maintenance of a building which they consider to be of special architectural or historic interest;  
  
While the building may be listed, it is not required. The Welsh Ministers need only be satisfied that the building is of “special architectural or historic interest” to make a grant.
  - b. the maintenance of any land associated with building;  
  
This will permit grants to support the maintenance of land associated with a building for purposes such as access or the provision of amenities.
  - c. the repair or maintenance of objects ordinarily kept in such a building; or  
  
This would permit the funding of the conservation of objects found in a historic building. These could range from fittings and furniture to ornaments and works of art.

- d. the maintenance of a garden or other land which they consider to be of special historic interest.

In contrast to paragraph (b), the expenditure in this paragraph is limited to the maintenance of a garden or other land considered to be of special historic interest. This might include parkland, some other designed landscape or, perhaps, a relict industrial landscape providing the setting for a building of special architectural or historic interest.

- 562. The section's remaining provisions apply where the grant under subsection (1) is made on terms which provide for it to be recoverable. In order for it to be recoverable, either before or at the time of making the grant the Welsh Ministers must give notice in writing to the recipient. They must also specify a "recovery period" of no more than ten years after the day the grant is made during which the grant will be recoverable under subsections (4) to (6) (subsection (2)).
- 563. Subsection (3) provides that the Welsh Ministers may recover all or part of the grant if the recipient fails to comply with any condition imposed on the grant.
- 564. Subsections (4) to (6) provide the Welsh Ministers with powers to recover all or part of a grant in the event of a disposal during the recovery period of the whole or part of the interest that the grant recipient held in the building, land or objects to which the grant relates on the day that the grant was made. A disposal may be made by sale, by exchange or by lease for a term of at least 21 years.
- 565. These recovery powers might be used if, for example, a building's value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise. These powers are equivalent to those provided for local authorities in section 149(3)–(5).

### ***Section 151 — Acceptance by Welsh Ministers of endowment for upkeep of building***

- 566. **Section 151** makes provision about the Welsh Ministers accepting a gift of property on endowment trust to use the income from the property for the repair and maintenance of a building which the Welsh Ministers consider to be of special historic or architectural interest. The building must be one in which the Welsh Ministers have or are about to have an interest or which is or is shortly to be under their control or management. In particular, the section makes provision about the validity of the gift and trust, the Welsh Ministers' powers, and the consequences of the Welsh Ministers ceasing to have an interest in, or control or management of, the building to which the trust relates.

### ***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.