

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 — Conservation Areas

Section 160 — Exercise of planning functions: general duty relating to conservation areas

601. Subsection (1) of section 160 places a duty on any person, in exercising a planning function in relation to a building or other land in a conservation area, to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. This is a wide-ranging duty because there are many planning functions (see paragraphs 604–07 below) and the duty applies to anyone exercising them (as long as the person is doing so in relation to a building or other land in a conservation area).
602. In case law (*South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 ALL ER 573), “preservation” has been understood as doing no harm to a conservation area’s existing character or appearance. Enhancement will improve the character or appearance, for instance by removing a derelict building that is an eyesore and harms the character of the conservation area.
603. The duty under section 160 applies to any person, so it applies not just to planning authorities but also, for instance, to the Welsh Ministers and planning inspectors.
604. The duty applies when a person is exercising a “planning function”, defined by subsection (2) as a function conferred or imposed under or by virtue of:
- a. Part 3, Part 4, Part 5 or Part 7 of this Act as it applies for the purposes of any of those Parts;
 - b. the 1990 Planning Act; or
 - c. section 70 or 73 of the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#) (to do with schemes, called estate management schemes, which allow estate owners to address potential problems about an estate’s appearance once they have lost their powers as landlords following tenants asserting rights to acquire the freehold of their properties).
605. Some particularly relevant planning functions under the Act are (this list is not exhaustive):
- a. controlling works that affect listed buildings (see Part 3, Chapter 2)
 - b. enforcing those controls (see Part 3, Chapter 4)
 - c. acquiring and preserving historic buildings (see Part 3, Chapter 5)
 - d. preparing proposals for the preservation and enhancement of conservation areas (see section 159)

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

- e. controlling demolition in conservation areas (see section 162)
 - f. carrying out urgent works to preserve buildings in conservation areas (see section 164).
606. Some particularly relevant planning functions under the 1990 Planning Act are (this list is not exhaustive):
- a. preparing development plans (see Part 2 of that Act)
 - b. controlling development (see Part 3 of that Act)
 - c. enforcing those controls (see Part 7 of that Act)
 - d. controls relating to trees, advertisements and land that requires maintenance (see Part 8 of that Act)
 - e. exercising highways powers (see Part 10 of that Act).
607. The duty, for instance, would apply when a planning authority is deciding whether to grant planning permission to carry out a development under section 58(1) of the 1990 Planning Act. Accordingly, in deciding whether to grant the planning permission, the authority must have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area in which the building is situated.
608. “Building” and “land” have the meanings given by section 210 of the Act.