

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 — Conservation Areas

Section 163 — Application of Part 3 to conservation areas

618. **Section 163** applies, with necessary modifications, provisions from Part 3 that relate to the control of works, enforcement and associated matters for listed buildings to buildings for which conservation area consent is required for demolition under section 161.
619. The listed building provisions that section 163 applies to conservation areas are from the following Chapters in Part 3: Chapter 2 (control of works), Chapter 4 (enforcement) and Chapter 6 (general — specifically, some of that Chapter’s provisions about powers of entry).
620. **Section 163(1)** specifies which of those Chapters’ provisions are, and are not, applied. Section 163(2) specifies how the applied provisions are to be read in the conservation areas context. The modifications in section 163(2)(a) are general and the modifications in section 163(2)(b), (c) and (d) are specific to particular provisions.
621. Two instances of the general modifications are:
- a. references to listed building consent are to be read as if they were references to conservation area consent
 - b. references to the character of a listed building are to be read as if they were references to the character or appearance of the conservation area in which the building is situated.
622. The following example shows how one section from Part 3 (section 117) is to be read in the conservation areas context as a result of section 163(1) and (2).

Section 117 – Offence of carrying out unauthorised works or breaching condition of consent

- (1) A person commits an offence if the person carries out, or causes to be carried out, works in relation to a listed building building to which section 161 applies in breach of section 88 161.
- (2) A person also commits an offence if the person—
 - (a) carries out, or causes to be carried out, works in relation to a listed building building to which section 161 applies, and
 - (b) fails to comply with a condition subject to which listed building consent conservation area consent has been granted for the works.
- (3) Subsection (2) does not limit what may be an offence under subsection (1).
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove that—

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

- (a) works were urgently necessary in the interests of safety or health or for the preservation of the building,
 - (b) it was not practicable to secure safety or health or the preservation of the building by carrying out works of repair or works to provide temporary support or shelter,
 - (c) the works that were carried out were limited to the minimum measures immediately necessary, and
 - (d) notice in writing justifying in detail the carrying out of the works was given to the planning authority in whose area the building is or was situated as soon as reasonably practicable.
- (5) In proceedings against a person for an offence under this section in relation to a building on which interim protection is conferred—
- (a) it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, that the interim protection had been conferred, and
 - (b) where the defence is raised by a person on whom a notice should have been served under section 78(1), it is for the prosecution to prove that the notice was served on the person.
- (6) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine or imprisonment for a term not exceeding the applicable limit under section 224(1A)(b) of the Sentencing Code, or both;
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.
- (7) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Example: Section 117 as modified by section 163