

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 — Conservation Areas**

590. A conservation area is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance. The designation of conservation areas reflects the idea that the historic environment more generally, as well as particular buildings or monuments, warrants recognition and protection.
591. **Part 4** requires planning authorities to determine which parts of their areas are of special architectural or historic interest and to designate them as conservation areas. It also places a general duty on planning authorities and others to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area in the exercise of planning functions. In addition, Part 4 makes provision for the authorisation and control of demolition in conservation areas, urgent works to preserve certain buildings in conservation areas, and the making of grants relating to the preservation or enhancement of conservation areas. The Act does not set out every way in which conservation areas are protected. For instance, trees in conservation areas enjoy some statutory protection and that is dealt with in Part 8 of the 1990 Planning Act.
592. Conservation area boundaries are regularly updated on DataMapWales although each planning authority maintains an up-to-date list of conservation areas within its area. As of April 2023, there were 528 conservation areas listed on DataMapWales.
593. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of conservation areas. The guidance at the time of writing these notes, *Managing Conservation Areas in Wales* (2017), sets out the general guidelines for the designation and management of conservation areas.
594. Many of the listed building provisions in Part 3 of the Act also apply to conservation areas in this Part, but with some changes.

#### ***Section 158 — Designating areas of special architectural or historic interest as conservation areas***

595. Subsections (1) and (2) of section 158 require planning authorities to determine, from time to time, which parts of their areas should be designated as conservation areas and whether there should be revisions to existing conservation areas. If a planning authority considers that a part of its area is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance, the authority must designate the part as a conservation area (or extend an existing designation to include it). If the authority considers a part of its area that is currently designated no longer meets the criteria, it must cancel the designation or vary the designation to exclude the part.
596. In practice, conservation areas are created, varied or cancelled following a detailed appraisal process, though potential conservation areas may be identified in the course

of other activity such as evidence gathering for a local development plan or in the development of a wider heritage strategy.

597. Subsections (3) to (5) of section 158 specify some procedural requirements which planning authorities must follow after designating, varying or cancelling designations.
598. Under subsection (6) of section 158, a designation as a conservation area is a local land charge. A local land charge will alert a purchaser to the fact that there are restrictions on the use of the land as a result of it being situated in a conservation area.

***Section 159 — Duty to formulate and publish proposals for preservation and enhancement of conservation areas***

599. Subsection (1) of section 159 places a duty on planning authorities to prepare and publish proposals for the preservation and enhancement of their conservation areas from time to time. Although this establishes no fixed period for the preparation and publication of the proposals, *Managing Conservation Areas in Wales* (2017) sets out that it is considered best practice to undertake conservation area reviews on a five to ten year cycle.
600. Subsection (2) requires a public authority to submit such proposals to a public meeting in the conservation area (or as near to it as reasonably practicable). An authority might also undertake wider consultation and engagement, in the form of exhibitions, surveys and social media activity, to obtain community views on the proposals.

***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):

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- 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)
  - 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.

***Section 161 — Requirement for demolition to be authorised***

***Schedule 11 — Effect of section 161 ceasing to apply to building***

609. **Section 161** provides that a person must not carry out works for the demolition of a building in a conservation area (or cause such works) unless they have been authorised by the grant of conservation area consent under section 162.
610. **Section 161(2)** excludes various categories of building from the requirement to obtain conservation area consent. The excluded categories are:
- a. buildings which are scheduled monuments — but demolishing a scheduled monument requires scheduled monument consent (section 11)
  - b. listed buildings — but demolishing a listed building requires listed building consent (section 88)
  - c. buildings of descriptions specified in regulations made by the Welsh Ministers
  - d. buildings of descriptions specified in directions given to an individual planning authority by the Welsh Ministers.
611. The buildings described by the Welsh Ministers in subsection (2)(c) might, for instance, be of small-scale, such as minor outbuildings or sheds, so their demolition would be unlikely to have a substantial impact on the character of the conservation area. Alternatively, the Welsh Ministers might identify a range of buildings whose demolition is already authorised or required under other enactments or procedures. These are only examples and other buildings might be described by the Welsh Ministers.

612. Subsection (3) permits the Welsh Ministers to direct a planning authority that conservation area consent is needed for a building in its area even though the building falls within a description of buildings that were excluded from needing conservation area consent by regulations made under subsection (2)(c). Such a direction might be used if a conservation area contained a number of buildings that made an important contribution to its character that would otherwise be excepted from conservation area consent by regulations — for instance, small corrugated-iron coal bunkers in an industrial community.
613. Subsection (4) excludes certain emergency works carried out by or on behalf of the Crown from the requirement to obtain conservation area consent. The works that are excluded are works carried out by or on behalf of the Crown in the circumstances set out in paragraphs (a) to (d) of section 117(4).
614. **Section 161(5)** introduces Schedule 11, which deals with what happens if conservation consent used to be required to demolish a building, but is no longer needed. That could happen if, for instance, the building is taken out of the scope of conservation area consent by regulations made under subsection (2)(c) or by a direction made under subsection (2)(d). Both in its form and effect, Schedule 11 closely mirrors Schedule 7 (end of interim protection or temporary listing for buildings).

***Section 162 — Authorisation of demolition by conservation area consent***

615. Under section 162(1), works for the demolition of a building to which section 161 applies are authorised if:
- a. first, the relevant planning authority or the Welsh Ministers grant written conservation area consent; and
  - b. second, the demolition works are carried out in accordance with the terms of the consent (including any conditions attached to it).
616. Applications for conservation area consent must generally be made to planning authorities under section 90. But under section 105, the Welsh Ministers may make regulations requiring that applications by planning authorities or the Crown for conservation area consent be made to the Welsh Ministers. And under section 106 an appropriate Crown authority (defined in section 207) may in certain circumstances apply to the Welsh Ministers (instead of to a planning authority) for consent. Sections 90, 105 and 106 are in Part 3 of the Act, which deals with listed buildings. But they also apply in relation to conservation area consent, as a result of section 163.
617. The expectation is that conservation area consent will be obtained before any works begin. However, under subsection (2), a planning authority or the Welsh Ministers may grant conservation area consent for unauthorised works already carried out. In such a case, the works are only authorised from the grant of the consent. Any liability for an offence arising from the unauthorised works under section 117 (as applied by section 163) remains and could be the basis for subsequent proceedings.

***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—
  - (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*

***Section 164 — Urgent works to preserve buildings in conservation areas***

623. If the Welsh Ministers consider that the preservation of an unlisted building is important for maintaining the character or appearance of a conservation area they may make a direction to apply section 144 (from Part 3 of the Act) to that building (section 164 (1 and 2)). Section 144 enables local authorities and the Welsh Ministers to carry out urgent works to preserve listed buildings.
624. If the Welsh Ministers have made a direction to apply section 144 to an unlisted building in a conservation area, section 164(3) provides that the related provisions about making owners of buildings meet the cost of urgent preservation works will also apply. Those provisions (which include allowing owners to contest the recovery of costs) are stated in sections 145 (power to require owner to meet costs of preservation works) and 146 (further provision about recovery of costs of preservation works).

***Section 165 — Grant by Welsh Ministers for preservation or enhancement of conservation areas***

625. Under section 165 the Welsh Ministers may make grants to meet expenditure they consider has made, or will make, a significant contribution towards the preservation or enhancement of the character or appearance of a conservation area.
626. Subsections (5) to (7) set out powers of the Welsh Ministers to recover all or part of such a grant if it was made in relation to a building or other land but then — during a specified recovery period — there is a disposal of all or part of the interest that the recipient of the grant had in the building or land on the day when the grant was made. A disposal in this context means a sale, exchange or lease for a term of at least 21 years. The recovery period begins with the day on which the grant is made and must end no more than 10 years after that day.
627. These recovery powers might be used if, for example, the recipient of the grant were to sell a property to take advantage of a higher value gained as a consequence of the grant-aided works.
628. Under subsection (3), the Welsh Ministers may only recover grants using the powers described above if:
- a. the terms of the grant say it is recoverable under section 165, and
  - b. before or on making the grant the Ministers give written notice to the recipient of the grant summarising the effect of section 165 and specifying the recovery period.
629. As is stated at subsection (4), the Welsh Ministers may also recover grants if conditions imposed on the making of grants are not complied with.

***Section 166 — Conservation area agreements***

630. The Welsh Ministers and planning authorities may use conservation area agreements to collaborate in allocating grant money for the repair of buildings in conservation areas. Section 166(1) and (2) provide that the Welsh Ministers and one or more planning authorities may agree to set aside for a specified period of years an amount of money for making grants to repair buildings that are in a conservation area and are included in a list or shown on a map prepared for this purpose.
631. In practice, the negotiation of a conservation area agreement typically starts with a planning authority drawing up a “delivery plan” setting out what the aims, objectives and targets of the scheme would be. If the Welsh Ministers are happy with the delivery plan, it will form the basis of the conservation area agreement. If (as is normally the

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case) it is agreed that the planning authority will supervise the agreement, the authority will be responsible for making the grants, including the share contributed by any other partner organisations.

632. A grant made in relation to a conservation area agreement may, in certain circumstances, be recovered by the body that made it. If the body is the Welsh Ministers, the recovery powers set out in section 165 will apply, but with a recovery period of 3 years (section 166(5)). If a planning authority has made a grant under section 148 (in Part 3), the recovery powers set out in section 149 (also Part 3) will apply.