

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 — General

Section 197 — Power to require information by notice

Section 198 — Offences in connection with section 197

702. *Section 197* enables a “relevant authority” (defined in subsection (4) as the Welsh Ministers or a local authority) to serve an information notice on the occupier of any land or anyone who receives rent in respect of any land. The information notice requires the recipient to provide information about the nature of the person’s interest in the land and the name and address of any other person known to have an interest in the land. Subsection (2) provides that an information notice may only be served where the information is required to enable the relevant authority to undertake particular functions under the Act. For instance, when investigating alleged unauthorised works to a scheduled monument or listed building, the Welsh Ministers or a local authority may use an information notice as an initial step to identify occupiers and owners before making contact. For the purposes of this section, local authority has the meaning given in section 157.
703. *Section 198* provides that a person commits an offence if the person, without a reasonable excuse, fails to provide information, or knowingly provides false or misleading information, in response to an information notice served under section 197.
704. A person guilty of the offence of failing, without a reasonable excuse, to provide the required information is liable on summary conviction to a fine not exceeding level 3 on the standard scale. A person guilty of the offence of knowingly providing information which is false or misleading in a material respect is liable on summary conviction or on conviction on indictment to an unlimited fine.

Section 199 — Information about interests in Crown land

705. *Section 199* allows the Welsh Ministers to make requests in certain cases to the appropriate Crown authority for information about the nature of its interest in Crown land and the name and address of any other person who may have an interest in the land. The request for information may not relate to a private interest in Crown land, in which case section 197 will apply. The Welsh Ministers may only request information about interests in Crown lands for certain purposes which relate to enabling the Welsh Ministers, or a local authority (as defined in section 157) to exercise the particular functions under the Act set out in section 197(2). “Appropriate Crown authority” and “private interest” are defined in section 207.
706. Subsection (3) requires the appropriate Crown authority to comply with such a request unless it does not know the information or it would disclose information about national security or measures for the security of land or other property.

Section 201 — Civil sanctions

707. **Section 201** provides for the application of civil sanctions to offences committed under this legislation.
708. Subsection (1) gives the Welsh Ministers regulation-making powers to make any provision for a civil sanction in relation to an offence under this Act that they could make under Part 3 of the 2008 Regulatory Enforcement Act if they or any other authority with an enforcement function were a regulator in relation to a relevant offence. Civil sanctions may include fixed monetary penalties and various discretionary requirements to be determined by the relevant enforcement authority. The discretionary requirements may include financial penalties to be set by a regulator; steps to be taken to ensure an offence will not reoccur; or steps to be taken to restore the position before the commission of the offence.
709. Subsections (2) to (4) apply relevant provisions of the 2008 Regulatory Enforcement Act to any provision that the Welsh Ministers make by regulations under subsection (1).

Section 202 — Making claims for compensation

Section 203 — Determination of compensation claims by Upper Tribunal

Section 204 — Compensation for depreciation of value of land

710. **Sections 202 to 204** make various provisions relating to compensation.
711. **Section 202** enables the Welsh Ministers to make regulations about how claims for compensation under the Act must be made. The regulations may also amend any provision of the Act which specifies the period within which a claim for compensation must be made.
712. Subsection (2) provides that, if they consider there to be good reasons for doing so, the Welsh Ministers may extend the period for claiming compensation under the Act in a particular case.
713. **Section 203** provides that any dispute about compensation payable under the Act must be referred to and be determined by the Upper Tribunal. Subsection (2) further provides that section 4 of the 1961 Act applies to any Upper Tribunal proceedings about disputed compensation under the Act. Section 4 enables the Upper Tribunal to require one party in any proceedings before it about disputed compensation to pay the costs incurred by another party to those proceedings.
714. **Section 204** provides that section 5 of the 1961 Act, which sets out basic rules for assessing compensation on the compulsory acquisition of land, applies when calculating compensation for depreciation of the value of land. This could be applicable, for example, when the value of the land has reduced as a result of the refusal of scheduled monument consent (section 21) or the revocation of listed building consent (section 108). It also sets out rules about who may claim and receive compensation, and about the basis on which compensation is payable, if the interest in land is subject to a mortgage.

Section 205 — Service of notices and other documents: general

Section 206 — Additional provision about service on persons interested in or occupying land

715. **Sections 205 and 206** make provision for the service of notices or other documents on persons, including bodies corporate, under the Act. For these purposes, “served” includes references in the Act to “serve”, “give” (and any similar terms).

716. **Section 205(2)(a) to (d)** sets out the different methods of service that may be used under the Act, including electronic communications. Electronic communications may only be used where the person being served has provided an address for electronic service, and when using this method — email, for example — specific conditions need to be met to ensure that the recipient can read and access the document (section 205(3)). A notice can be served on a body corporate by sending it by post in a pre-paid letter or handing it to the secretary or clerk at its registered or principal office, or by using electronic communication.
717. **Section 206** makes further provision for the service of a notice or document on a person with an interest in a building, monument or land whose name and/or address may be unknown. The section also provides for the service of a notice or document on an occupier of a building, monument or land.
718. If, after making reasonable inquiries, such as contacting the Land Registry, the name of a person with an interest in a building, monument or land is unknown, a document may be addressed to the person as “the owner” (subsection (2)). A document to be served on an occupier of a building, monument or land, may be addressed to the person by name or as an “occupier”.
719. Subsections (4) and (5) set out options for the proper service of a document on a person with an interest in a building, monument or land with no current address for delivery or on a occupier of a building, monument or land.

Section 208 — Church of England land

720. **Section 208** makes provision for the application of the Act to land belonging to the Church of England. There are a small number of churches in Wales which are owned by the Church of England. Among other things, the section provides that where a notice or document is served under the Act on the Church of England as an owner of land, a corresponding notice or document must be served on the Diocesan Board of Finance for the area in question. Subsection (3) provides that any compensation payable to the Church of England under the Act must be paid to the appropriate Board of Finance.

Section 209 — Regulations under this Act

721. **Section 209** contains general provisions regarding regulations made under this Act. The power to make regulations is exercisable by statutory instrument and subsections (2) and (3) set out what provisions may be made by such regulations.
722. Subsection (5) identifies the regulations that must be laid before and approved by resolution of the Senedd prior to being made; this is known as the affirmative procedure. Paragraph (h) applies this requirement to any regulations that amend or repeal enactments in primary legislation.
723. Under subsection (6) all other regulations are subject to the negative procedure, in which a statutory instrument is laid before the Senedd and it becomes law unless it is annulled within a period of 40 days.

Section 211 — Consequential and transitional provision etc.

Schedule 13 — Minor and consequential amendments and repeals

Schedule 14 — Transitional and saving provisions

724. **Section 211** introduces Schedules 13 and 14 which together make amendments and transitional provisions that will accommodate the legal changes occasioned by the enactment of the Act.
725. Subsections (3) and (4) give the Welsh Ministers powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations.

726. [Schedule 13](#) contains various amendments that are necessary in consequence of consolidating the legislation in the Act. Some changes make provision for the appropriate citation of the Act in existing legislation, while many others are needed to extract Wales from the historic environment legislation that will remain in effect in England and Scotland, particularly the 1979 Act and 1990 Listed Buildings Act.
727. [Paragraphs 35 to 37](#) of Schedule 13 make the changes that are necessary to revoke Part II (archaeological areas) of the 1979 Act in Wales. Part II has never been used in Wales, because in practice planning policy provides greater protection to the archaeological heritage. This gives effect to recommendation 13.11 of the Law Commission’s report, *Planning Law in Wales* (Law Com No 383, 2018).
728. [Paragraph 65](#) of Schedule 13 inserts a new section 79A into the [Building Act 1984 \(c. 55\)](#) (“the 1984 Act”). Derived from section 56 of the 1990 Listed Buildings Act, it requires a local authority in Wales to consider taking certain steps in relation to listed buildings and certain other buildings under the Act prior to obtaining an order under section 77(1)(a) of the 1984 Act (making a dangerous building order) or serving a notice under section 79(1) of that Act (serving a notice with regard to a ruinous or dilapidated building detrimental to amenity).
729. If the building is listed and the local authority is the planning authority for the area in which the building is situated, it should consider whether it should exercise its powers under sections 137 and 138 of the Act to serve a repairs notice and initiate the process for compulsory acquisition.
730. [Section 79A\(1\)\(b\)](#) further provides that, in any case involving a listed building, a local authority should consider undertaking urgent preservation works under section 144 of the Act.
731. [Section 79A\(2\)](#) further provides that, if a building is subject to interim protection or temporary listing under the Act, or if the Welsh Ministers have given a direction in relation to a building in a conservation area on the ground that it is important for maintaining the character or appearance of that area, the local authority should consider undertaking urgent works for the preservation of the building under section 144 of the Act.
732. [Paragraph 90](#) inserts a new section 314A into the 1990 Planning Act. Derived from section 66 of the 1990 Listed Buildings Act, it provides that, if considering whether to grant planning permission for development that affects a listed building or its setting, a local planning authority in Wales or the Welsh Ministers must have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest.
733. [Section 314A\(4\)](#) of the 1990 Planning Act specifies that in this section “listed building” refers to buildings situated in both Wales and England. Consequently, in regions of Wales along the border with England, a Welsh planning authority or the Welsh Ministers might have to give special regard to the desirability of preserving listed buildings and their settings on both sides of the border when considering whether to grant planning permission. A complementary amendment to the 1990 Listed Buildings Act is made by [paragraph 136](#). This will place a corresponding duty on English local planning authorities and the Secretary of State with regard to listed buildings in Wales.
734. [Paragraph 127](#) amends section 49 of the 1990 Listed Buildings Act so that its provisions for compensation on the compulsory acquisition of listed buildings will continue to apply to England and Wales. The other provisions of the 1990 Listed Buildings Act cease to apply to Wales by virtue of [paragraphs 93 to 160](#).
735. [Paragraph 192](#) completely repeals the Historic Environment (Wales) Act 2016. The bulk of the provisions have been restated in the Act apart from those for the Advisory Panel for the Historic Environment, which have never been brought into effect.

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

736. [Schedule 14](#) contains various provisions necessary for the smooth and uninterrupted transition from earlier enactments to the Act. While Part 1 contains general provisions, Part 2 makes provision for matters relating to monuments under guardianship, and Part 3 deals with a number of specific cases in which the Act makes changes to the previous law.

Section 213 — Short title

737. This section provides that the short title of the Act, by which other documents may refer to it, is the Historic Environment (Wales) Act 2023.