

# HISTORIC ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Listed Buildings**

##### *Section 23 – Overview of this Part*

133. [Section 23](#) provides an overview of the provisions within this Part of the Act which make amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”).

##### *Section 24 – Amendments relating to the listing of buildings*

134. [Section 24](#) inserts new provisions into the 1990 Act which place a duty on the Welsh Ministers to consult on certain changes to lists, to make arrangements for interim protection pending decisions as to whether to list buildings, and to provide for the review of certain listing decisions.
135. Section 1 of the 1990 Act places the Welsh Ministers under a duty to compile lists of buildings of special architectural or historic interest.
136. [Section 24\(1\)](#) inserts new sections 2A to 2D into the 1990 Act to make provision about the steps that must be carried out in connection with the listing of buildings.

#### **2A Duty to consult on certain changes to lists**

137. If the Welsh Ministers propose to include a building on the list or remove one from the list, new section 2A requires them to consult the appropriate persons, including the owner and occupier of the building, as listed in subsection (3). Section 2A(5) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.
138. The Welsh Ministers must consult the appropriate persons by serving a notice upon them. The notice must give the appropriate persons at least 28 days to respond. If the proposal is to include a building in the list, the notice must explain that interim protection applies to the building until notified otherwise and that any unauthorised works to the building in the meantime will constitute a criminal offence.
139. Section 329 of the Town and Country Planning Act 1990 (service of notices) applies (by virtue of section 89 of the 1990 Act) to the service of notices under new section 2A.

#### **2B Interim protection pending certain listing decisions**

140. New section 2B makes provision for interim protection for buildings which the Welsh Ministers are proposing to include in the list under section 1 of the 1990 Act.
141. Section 2B(2) sets out that interim protection applies from the beginning of the day specified in the notice served under section 2A, and that all the provisions of the

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1990 Act (other than sections 47 to 51 and 59 — provisions relating to compulsory acquisition of listed buildings and certain acts causing or likely to result in damage to listed buildings) have effect from that date as if the building were a listed building.

142. Section 2B(4) makes provision for the cessation of interim protection following a decision by the Welsh Ministers to list, or not to list, the building.
143. Section 2B(5) requires the Welsh Ministers to publish electronically a list of all buildings granted interim protection, and to provide a copy of any notice served under section 2A on request.

## **2C Provisions applicable on lapse of interim protection**

144. New section 2C introduces Schedule 1A into the 1990 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to list a building.

## **2D Review of certain listing decisions**

145. New section 2D makes provision for the review of certain listing decisions.
146. Section 2D applies where the Welsh Ministers include a building on the list. Section 2D(2) requires the Welsh Ministers to serve a notice on the owner and occupier of the building informing them that the building has been included in the list and that they may make an application to the Welsh Ministers requesting them to review their decision.
147. Section 2D(3) requires the Welsh Ministers to carry out a review if requested to do so, and to make a decision on the review. It also requires them to amend the list if it is necessary to do so to give effect to the final decision.
148. Section 2D(4) prohibits any legal challenge to the validity of a decision made on a review, unless that challenge is brought by means of proceedings in the High Court under sections 62 and 63 of the 1990 Act (validity of instruments, decisions and proceedings). The decision may only be challenged under sections 62 and 63 on the grounds that the decision was not within the powers of the Act, or that any of the relevant requirements had not been complied with in relation to the decision.
149. Section 2D(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
150. Section 2D(6) requires the Welsh Ministers to make regulations about: the grounds on which an application for a review may be made, the form and manner of such an application, the information that must be provided in connection with an application, and the period within which an application must be made.
151. Section 2D(7) enables the Welsh Ministers to make regulations on other procedural matters relating to reviews.
152. Section 2D(8) introduces Schedule 1B into the 1990 Act, which allows the Welsh Ministers to appoint a person to make decisions on reviews.
153. [Section 24\(2\)](#) inserts new subsection (3A) into section 9 of the 1990 Act (offences). This new subsection provides a defence for a person who is accused of carrying out unauthorised works to a building on which interim protection has been conferred. The defence applies where the person can prove that he or she did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building. If such a defence is raised by a person on whom a notice should have been served under section 2A(2), the prosecution will have to prove that the notice was served.

154. **Section 24(3)** inserts new section 28B into the 1990 Act which makes provision for compensation for loss or damage caused by interim protection if the Welsh Ministers decide not to include a building on the list.

***Section 25 – Amendments relating to the temporary listing of buildings***

155. **Section 25** inserts new section 3A into the 1990 Act to provide temporary protection for unlisted buildings in a manner which takes account of the new provision for interim protection that this Act inserts into the 1990 Act.
156. Subsection (1) limits the application of section 3 of the 1990 Act (temporary listing: building preservation notices) to England only.
157. Subsection (3) inserts new section 3A into the 1990 Act. This new section applies to buildings in Wales.
158. Section 3A(1) states that if a local planning authority believes that a building that may merit listing because of its special architectural or historic interest is in imminent danger of destruction or alteration that threatens its character as a building of interest, it may serve a building preservation notice. Section 3A(3) specifies that a building preservation notice takes effect as soon as it is served on the owner and occupier and remains in force for up to six months, subject to section 3A(4).
159. Section 3A(4) provides that a building preservation notice will cease to have effect if the Welsh Ministers serve a consultation notice under section 2A(2) that triggers interim protection or if they notify the local planning authority in writing that they do not intend to consult under new section 2A on a proposal to include the building in a list.
160. Section 3A(5) specifies that while the building preservation notice is in force, the provisions of the 1990 Act, with the exception of sections 47 to 51 and section 59 (compulsory acquisition of listed buildings in need of repair and certain acts causing or likely to result in damage to listed buildings), apply.
161. Section 3A(6) applies in situations where interim protection supersedes a building preservation notice. Anything done under section 3A(5) while the building preservation notice was in force — for instance, a grant of listed building consent or the service of a listed building temporary stop notice — is to be treated as done under interim protection by virtue of new section 2B(2).
162. Section 3A(7) and(8) requires the local planning authority to notify the owner and occupier of the building immediately if the Welsh Ministers advise the authority that they do not intend to consult under new section 2A on a proposal to include the building in a list. If such a notification is given, the local planning authority may not serve another building preservation notice on the building for a period of 12 months.
163. **Section 25(4)** modifies the manner in which compensation for interim protection is calculated in instances where a building preservation notice was in force immediately before interim protection began. It adds subsections (4) and (5) to new section 28B of the 1990 Act (compensation for loss or damage caused by interim protection) which provide that, for the purposes of compensation, interim protection is to be treated as beginning at the time that the building preservation notice came into force.
164. **Section 25(5)** inserts new subsection (1A) into section 29 of the 1990 Act (compensation for loss or damage caused by service of building preservation notice). It specifies that anyone who had an interest in a building at the time that a building preservation notice was served is entitled to compensation from the local planning authority for any loss or damage directly attributable to the effect of the notice if the building preservation notice ceases by virtue of its expiration at the end of six months (section 3A(3)(b)) or the Welsh Ministers' notification to the local planning authority that they do not intend to consult under new section 2A on a proposal to include the building in a list (section 3A(4)(b)).

***Section 26 – Amendments relating to the listing of buildings: consequential provision***

165. **Section 26** makes amendments to the 1990 Act in consequence of the introduction of new requirements for consultation, interim protection, the review of listing decisions and the temporary listing of buildings.
166. **Section 26(3)** inserts new subsections (3A) and (3B) into section 2 of the 1990 Act (publication of lists). New section 2(3A) requires the Welsh Ministers to inform the local planning authority of their decision to include or remove a building from the list. It also requires the Welsh Ministers to inform the owner and occupier if a building has been removed from a list. The further steps that the Welsh Ministers must take when they include a building in a list are contained in new section 2D, and new section 2(3B) signposts this provision.
167. Section 21(4) of the 1990 Act allows an applicant making an appeal to the Welsh Ministers against a local planning authority's handling of a listed building consent application for a building in respect of which a building preservation notice is in force to include a claim that the building should not be listed. Section 26(7) of this Act amends that section of the 1990 Act so that an applicant making an appeal against a local planning authority's handling of a listed building consent application for a building in respect of which interim protection is in force may similarly include a claim that the building should not be listed.
168. **Section 26(8)** applies section 31 of the 1990 Act, which makes provision about compensation payable in respect of depreciation of the value of an interest in land, to the compensation payable under section 28B of the 1990 Act (inserted by section 24(3) of this Act) for loss or damage attributable to the effect of interim protection.
169. **Section 26(10)** adds sections 2B (interim protection pending certain listing decisions) and 3A (temporary listing in Wales: building preservation notices) to the list of provisions which do not apply to buildings which are scheduled monuments under the 1979 Act.
170. **Section 26(11)** applies section 62 of the 1990 Act (validity of certain orders and decisions) to a decision on a review under section 2D of that Act (inserted by section 24(1) of this Act), so that a decision of that kind may only be referred to the High Court on certain grounds.
171. **Section 26(12)** amends section 82 of the 1990 Act so that the new provisions introduced by this Act relating to consultation, interim protection and review in connection with the designation of listed buildings apply to the land of local planning authorities.
172. **Section 26(13)** gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation for loss or damage arising from interim protection.

***Section 27 – Issue of certificate that building not intended to be listed: Wales***

173. **Section 27** inserts new section 6A into the 1990 Act and amends section 6 of that Act (issue of certificate that building not intended to be listed) so that it applies only to buildings in England.
174. New section 6A allows a person to apply to the Welsh Ministers for the issue of a certificate of immunity from listing. The issue of a certificate of immunity from listing guarantees that a building will not be listed for 5 years from the date of issue and prevents a local planning authority from serving a building preservation notice in relation to the building during the same period.
175. An application for a certificate of immunity from listing may be made under section 6A at any time. This enables owners and developers to seek guarantees that buildings will

be immune from listing without having to incur the cost associated with an application for planning permission, which is a prerequisite for an application for a certificate of immunity from listing under section 6.

### **Section 28 – Heritage partnership agreements**

176. **Section 28** inserts new sections 26L and 26M into the 1990 Act, which make provision for heritage partnership agreements relating to listed buildings. Owners of complex or multiple historic assets may have to apply for an array of separate consents if they wish to carry out management programmes for their properties. In such cases, heritage partnership agreements may provide a more positive approach to the sustainable management of listed buildings and reduce the number of consent applications required.

#### **26L Heritage partnership agreements**

177. The Welsh Ministers or a relevant local planning authority may make a heritage partnership agreement with an owner of a listed building or part of a listed building in Wales, and any persons mentioned in section 26L(2) or (4) may be an additional party to the agreement.
178. Section 26L(6) and (7) sets out that a heritage partnership agreement may grant listed building consent for specified works under section 8(1) of the 1990 Act and attach conditions to that consent. A heritage partnership agreement may not, however, grant consent for the demolition of a listed building or any other permission, such as planning permission.
179. Section 26L(8) sets out the range of additional matters for which a heritage partnership agreement may make provision, including the specification of works that the parties agree would not affect the character of the listed building and, therefore, do not require listed building consent.
180. Section 26L(10) defines "owner" and "relevant local planning authority" for the purpose of heritage partnership agreements.

#### **26M Heritage partnership agreements: supplemental**

181. New section 26M makes supplemental provision in relation to heritage partnership agreements. Section 26M(1) provides that such agreements must be in writing and make provision for review, termination and variation by the parties.
182. Section 26M(2) allows a heritage partnership agreement to cover more than one listed building, provided that, in each case, a relevant local planning authority (or the Welsh Ministers) and an owner are parties to the agreement. For example, a heritage partnership agreement could include all of the listed bridges in the ownership of a local authority.
183. Section 26M(3) places a duty upon the Welsh Ministers to make regulations about: the consultation and publicity required in connection with the creation or variation of a heritage partnership agreement; any particular terms that must be included in an agreement; and provisions for termination of an agreement or any provision thereof.
184. Section 26M(5) allows the Welsh Ministers by regulations to disapply, apply or reproduce, with or without modifications, certain provisions of the 1990 Act for the purpose of heritage partnership agreements.
185. Section 26M(6) provides that heritage partnership agreements will only be binding on the parties to those agreements. Future owners and occupiers of those buildings will not be bound by those agreements, nor will they be able to benefit from any listed building consent provided by the agreement.



### **Section 29 – Temporary stop notices**

186. **Section 29** inserts new sections 44B to 44D into the 1990 Act which make provision to allow temporary stop notices to be issued in relation to listed buildings.

#### **44B Temporary stop notices**

187. Unauthorised works often destroy the historic fabric, and can damage the special interest, of listed buildings. The 1990 Act makes it an offence to carry out unauthorised works to a listed building or fail to comply with the conditions of a listed building consent. The same Act makes provision for the service of a listed building enforcement notice to require the restoration of a listed building after unauthorised works, or steps to alleviate the effects of such works. A listed building enforcement notice cannot come into effect earlier than 28 days after its service. If an appeal is lodged against it, an enforcement notice will not take effect until the appeal has been determined or withdrawn, unless a court determines otherwise. A temporary stop notice, by contrast, can bring unauthorised works to an immediate halt, avoiding the risk of further damage to the historic fabric of the building.
188. Sections 44B to 44D provide local planning authorities with a power to serve a temporary stop notice requiring the immediate cessation of unauthorised works for a period of 28 days whilst a solution to the situation is sought.
189. A local planning authority may serve a temporary stop notice if it appears to the authority that works are being or have been carried out to a listed building without consent or in breach of a condition attached to a consent and the authority considers it expedient to stop those works immediately, in consequence of their effect on the character of the building as one of special architectural or historic interest (section 44B(1) and (2)).
190. Section 44B(3) requires the notice to be in writing and to specify the works which are to stop, explain why the notice has been issued and state that contravention of the notice is an offence. The works specified in the temporary stop notice need not include all of the works that are underway. For example, a local 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.
191. Section 44B(5) and (6) requires the local planning authority to display a copy of the temporary stop notice on the building and to specify, on the copy, the date on which it first does so. The notice takes effect as soon as the copy is first displayed on the building.
192. Section 44B(7) states that a temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 44B(8) to (10) states that a local planning authority may withdraw the notice before the end of 28 days (or any shorter period specified). A further temporary stop notice cannot be issued for the same works unless another enforcement action has been taken in relation to the contravention, for example, the service of a listed building enforcement notice or the obtaining of an injunction under section 44A of the 1990 Act. There is no requirement for a temporary stop notice to be accompanied or followed by a listed building enforcement notice or any other enforcement action.
193. Section 44B(11) allows the Welsh Ministers to make regulations that exempt the execution of certain works, or works in certain circumstances, from the effects of a temporary stop notice. This provides some flexibility for the Welsh Ministers to adapt the use of temporary stop notices in light of experience of their use.

#### **44C Temporary stop notices: offence**

194. New section 44C sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence if a notice is breached repeatedly.
195. Section 44C(3) and (4) sets out the defences to an offence under this section.
196. Section 44C(5) and (6) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. 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 received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

#### **44D Temporary stop notices: compensation**

197. Section 44D(1) to (3) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (2) of section 9 of the 1990 Act (offences) because listed building consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the local planning authority withdraws the temporary stop notice other than following the grant of listed building consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
198. Section 44D(4) specifies that no compensation will be payable for loss or damage that could have been avoided if the claimant had provided information required under the provisions mentioned in section 44D(5) or had otherwise cooperated with the local planning authority when responding to the temporary stop notice.
199. The provisions mentioned in section 44D(5) are section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which gives local authorities powers to obtain details of persons who have an interest in land, and section 330 of the Town and Country Planning Act 1990, which allows the local planning authority or the Welsh Ministers to require information as to interests in land.
200. [Section 29\(2\)](#) applies section 31 of the 1990 Act, which makes provision about compensation payable in respect of the depreciation of the value of an interest in land, to the compensation payable under section 44D for loss and damage attributable to a temporary stop notice.
201. [Section 29\(3\)](#) amends section 82A(2) of the 1990 Act (Crown application) so that the provisions which deal with temporary stop notices bind the Crown, except those in section 44C which make it an offence to contravene a temporary stop notice.
202. [Section 29\(4\)](#) amends section 88 of the 1990 Act (rights of entry) to allow local planning authorities to authorise a person in writing to enter land for the purpose of displaying a temporary stop notice, ascertaining whether a notice has been complied with and considering a claim for compensation.
203. [Section 29\(5\)](#) gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation arising from the service of a temporary stop notice.
204. [Section 29\(6\)](#) amends section 88B of the 1990 Act by removing the requirement to give 24 hours' notice prior to the use of powers of entry to display a temporary stop notice or to ascertain compliance with a notice.

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205. **Section 29(7)** amends Schedule 2 of the 1990 Act (lapse of building preservation notices) so that, on the lapse of a building preservation notice, any temporary stop notice which has been served on the building ceases to have effect.
206. **Section 29(8)** amends Schedule 4 of the 1990 Act (exercise of functions by different authorities). From time to time, the Welsh Ministers may require a local planning authority to submit for approval its proposed arrangements to obtain specialist advice in connection with the payment of compensation arising from the service of a temporary stop notice.

***Section 30 – Urgent works: extension of scope and recovery of costs***

207. **Section 30** inserts new sections 54(4A), 54(5A) and 55(5A) to (5G) into the 1990 Act. These provisions extend the range of circumstances in which local authorities or the Welsh Ministers may carry out urgent works to preserve a listed building, provide a right of appeal against the Welsh Ministers' decision as to the expenses that may be recovered in respect of such works, and allow land charges to be created to secure the payment of those expenses.
208. Section 54 of the 1990 Act provides for the execution of urgent works by local authorities to unoccupied listed buildings. The powers in section 54 may also be exercised by the Welsh Ministers.
209. There are restrictions on the circumstances in which urgent works may be carried out under section 54. Section 54(4) of the 1990 Act provides that where a building is occupied, urgent works may be carried out only to those parts of the building that are not in use. Section 30(1) of this Act amends this restriction so that it applies only to buildings in England.
210. New section 54(4A) broadens the circumstances in which urgent works can be undertaken to preserve listed buildings in Wales. It enables urgent works to be carried out to any listed building in Wales as long as they do not unreasonably interfere with its residential use.
211. **Section 30(3)** inserts new subsection (5A) into section 54 of the 1990 Act, which requires an occupier of a building which is in residential use to be given not less than seven days' notice of the intention to carry out urgent works to the property. The owner of the building must also be given seven days' notice of those works, in accordance with section 54(5) of the 1990 Act.
212. If local authorities or the Welsh Ministers incur expenses in undertaking urgent works to a listed building, they may recover these expenses in accordance with section 55 of the 1990 Act. Section 55 provides that the process of recovery is initiated through the service of a notice on the owner. The owner may contest the recovery of expenses by making representations to the Welsh Ministers on the grounds set out in section 55(4). The Welsh Ministers determine the amount that is recoverable.
213. **Section 30(6)** inserts new subsection (5A) into section 55 of the 1990 Act which allows an owner of a listed building, within 28 days of receiving the decision of the Welsh Ministers on the recoverable amount, to appeal that decision to the county court. A local authority may also appeal against the Welsh Ministers' decision in the same way.
214. **Section 30(6)** also inserts new subsections (5B) to (5G) into section 55 of the 1990 Act which provide for the expenses incurred in carrying out urgent works to be a charge on the land on which the listed building stands. The new subsections also provide for: the imposition of interest on the sum owed at a rate to be prescribed by order of the Welsh Ministers, the manner in which a land charge takes effect, and the powers and remedies available to the local planning authority under the Law of Property Act 1925 to enforce the charge, including a power to appoint a receiver.



***Section 31 – Preservation of listed buildings in disrepair***

215. **Section 31(1)** inserts new section 56A into the 1990 Act, which allows Welsh Ministers to make regulations for local authorities or the Welsh Ministers to take further steps for the proper preservation of listed buildings that have fallen into disrepair. The regulations may make provision for the service of a preservation notice on the owner of a listed building. Such a notice may specify the works required to secure the building's proper preservation and a deadline for the execution of the works. The regulations may also make provision for appeals against preservation notices, offences for failure to comply with the notices and appeals in respect of such offences.
216. New section 56A(3) and(4) allows the regulations under this section to disapply, apply or reproduce, with or without modification, any provisions in the 1990 Act, as well as to amend the 1990 Act, for the purpose of the preservation of listed buildings in disrepair.
217. **Section 31(2)** amends section 82A of the 1990 Act (application to the Crown) so that provision made under section 56A cannot bind the Crown.
218. **Section 31(3)** amends section 88 of the 1990 Act (rights of entry) to allow for the service of preservation notices.
219. **Section 31(4)** amends the Regulatory Enforcement and Sanctions Act 2008 to enable civil sanctions to be imposed in respect of offences in regulations made under new section 56A. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Act, for example, fixed monetary penalties, requirements to take specified steps, or stop notices.

***Section 32 – Service of documents by electronic communication***

220. **Section 32** amends section 89(1A) of the 1990 Act, so as to remove the restriction on the service of documents by electronic communication in relation to buildings in Wales, allowing all documents to be served by electronic communications.

***Section 33 – Determination of appeals by appointed person: supplementary provision***

221. **Section 33** inserts new paragraph 7(3) into Schedule 3 of the 1990 Act (determination of certain appeals by person appointed by Secretary of State). The new paragraph provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to determine an appeal under Schedule 3, the functions of determining the appeal and of doing anything in connection with the appeal are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This enables the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.