

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
Wednesday, 6 May 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

Private pre-meeting (09.00 – 09.15)

1 Introductions, apologies and substitutions

2 Renting Homes (Wales) Bill: Evidence session 4 – Chartered Institute of Housing, Community Housing Cymru, Welsh Local Government Association (09.15 – 10.15) (Pages 1 – 36)

Helen Northmore, Director, Chartered Institute of Housing

Stuart Ropke, Community Housing Cymru

Lyn Hambridge, Head of Housing at Pembrokeshire County Council, Welsh Local Government Association

Break (10.15 – 10.30)

3 Renting Homes (Wales) Bill: Evidence session 5 – Cymorth Cymru and Tai Pawb (10.30 – 11.15) (Pages 37 – 51)

Sam Austin, Cymorth Cymru

Emma Reeves-McAll, Equality and Diversity Officer, Tai Pawb

Break (11.15 – 11.20)

4 Renting Homes (Wales) Bill: Evidence session 6 – Residential Property Tribunal Wales (11.20 – 12.05) (Pages 52 – 58)

Andrew Morris, Residential Property Tribunal Wales

5 Papers to note (Pages 59 – 256)

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting (discussion of evidence received under items 2, 3 and 4; and further consideration of the Committee's approach to scrutiny of the Historic Environment (Wales) Bill)

7 Renting Homes (Wales) Bill: discussion of evidence received in sessions 4, 5 and 6 (12.05 – 12.20)

8 Historic Environment (Wales) Bill: Further consideration of the Committee's approach to scrutiny (12.20 – 12.30) (Pages 257 – 258)

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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-12-15 Papur 1 / Paper 1

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org

In Wales, we aim to provide a professional and impartial voice for housing across all sectors to emphasise the particular context of housing in Wales and to work with organisations to identify housing solutions.

Introduction

CIH welcomes the opportunity to present evidence to the Communities, Equality and Local Government Committee for stage 1 scrutiny of the Renting Homes (Wales) Bill.

CIH is the professional body for people working in housing and communities, with over 22,000 members across the UK, Ireland, Canada and Asia Pacific. Our mission is to maximise the contribution that our members make to the well being of communities.

We have provided written submissions to previous consultations on issues relating to the Bill and this paper draws heavily from these. In relation to the Bill itself, our response is informed by feedback from our members, our knowledge of the sector and expertise from our policy and practice teams.

General Comments

CIH Cymru supports the development of Welsh policies, practices and legislation that aim to addressing the key housing challenges we face. We promote a *one housing system* approach that:

- places the delivery of affordable housing at the top of national, regional and local strategies and secures investment to ensure good and sustainable quality of all homes.
- promotes the concept of housing led regeneration to capture the added value that housing brings in terms of economic, social and environmental outcomes.
- recognises the central role of Welsh Government as the housing 'system steward' to deliver an integrated housing system that encompasses all sectors and tenure options.

- recognises that meeting the housing needs of our communities is a key aspect of tackling inequality and poverty.
- ensures that there are properly resourced support services in place to prevent homelessness and protect the most vulnerable and supports the key role of local authorities as strategic housing enablers.
- utilises the existing housing stock including initiatives to bring the wasted resource of empty homes back into use.
- uses current and potential financial powers to intervene in housing markets and provide more homes and supports the development of innovative funding models.
- supports the development of new models of ownership and control including co-operative housing.
- recognises the critical role that housing professionals play in delivering good quality housing-related services, including fair access, safe communities and sustainable tenancies.

General Principles of the bill

1. CIH Cymru broadly welcomes the content and the aim of the Renting Homes (Wales) bill. We support the intention to complete tenancy reform and provide a consistent, clear rental framework in Wales, as we supported the previous Law Commission proposals and have been advocating a single tenancy for social housing since 1997.
2. We believe that a new statutory framework bringing together the multiple laws and legislative requirements on occupancy arrangements in Wales will benefit all stakeholders; tenants, landlords and statutory organisations responsible for regulation and enforcement, and will support Welsh Government's one-system approach to the national industry.
3. We endorse the Bill's aims to work in the interests of both tenants and landlords by reflecting the changing legal environment, simplifying and levelling social housing tenancies in Wales, and providing a model contract for private sector landlords and tenants, to standardise rights and encourage transparency as far as possible across the industry.
4. We believe that the proposals for changes to social housing tenancy arrangements will strengthen tenant security, increase equity and protect consumer rights. This includes the principle of 'levelling up' with regards to the bringing together of the two current types of social housing tenancies and their inherent properties (including the intention to remove Ground 8) to ensure that social housing tenants will have a right to judicial review when at risk of losing their home.
5. We commend the inclusion of supported housing in the Bill, and support the proposals to strengthen the housing access rights of young people by allowing 16 and 17 year olds to rent. This will be of particular benefit to young people leaving care and for those young people for whom remaining in the parental home is not a safe option.

6. We also welcome the introduction of prohibited conduct terms, which will help to protect the occupancy rights of victims and hold the perpetrator to account by increasing legal remedies available to landlords that help to deliver a victim-centred approach to tackling anti-social behaviour and domestic abuse.
7. We applaud the intention to make positive change in the Private Rented Sector (PRS), a growing and increasingly important market in Wales through: the introduction of standard contracts; the inclusion of repairing obligations in contracts; protection from retaliatory eviction; and changes to shared tenancies that should give greater flexibility to occupants and consumer rights.
8. We especially commend the collaborative approach taken by Welsh Government and the Bill team to involve all stakeholders in the process of developing the content of the Bill. This has included CIH Cymru, tenant representatives, landlord representatives and other experts who have been consulted on and involved in, the process. We are grateful for this further opportunity to influence and participate in the scrutiny of the Bill.

Potential barriers to the implementation of these provisions and unintended consequences

9. We suggest that appropriate resources should be made available to support the necessary public awareness raising campaign to implement the new legislation, for the benefit of all tenants, landlords and other stakeholders.
10. We understand that there has been some concern regarding the proposed removal of the current moratorium on PRS landlords seeking possession during the first six months of a tenancy. This will have an impact on tenant security and an impact on local authorities who wish to discharge their statutory duty for homeless households into the PRS. CIH Cymru believes that in order to manage anxiety regarding this proposal, there needs to be a commitment to developing tenant and landlord relationships as well as a commitment to develop a national tenant voice for those living in the PRS in Wales.

About Us

The Community Housing Cymru Group (CHC Group) is the representative body for housing associations and community mutuals in Wales, which are all not-for profit organisations. Our members provide over 153,000 homes and related housing services across Wales. In 2011/12, our members directly employed 7,500 people and spent over £850m in the Welsh economy.¹ Our members work closely with local government, third sector organisations and the Welsh Government to provide a range of services in communities across Wales.

Our objectives are to:

Be the leading voice of the social housing sector.

- Promote the social housing sector in Wales.
- Promote the relief of financial hardship through the sector's provision of low cost social housing.
- Provide services, education, training, information, advice and support to members.
- Encourage and facilitate the provision, construction, improvement and management of low cost social housing by housing associations in Wales.

In 2010, CHC formed a group structure with Care & Repair Cymru and CREW Regeneration Wales in order to jointly champion not-for-profit housing, care and regeneration.

Introduction

This paper is a response to the Communities, Equality and Local Government Committee request for evidence on the general principles of the Renting Homes (Wales) Bill. It looks at the need for legislation to improve the arrangements for renting a home in Wales and has been structured to cover general points and specific issues raised in the terms of reference.

General Points

Overall we very much welcome the proposals outlined in the rented homes bill and are supportive of the suggested legislative change. Simplifying the legal framework for tenancy agreements and providing additional rights and security for tenants is a positive step. We agree that the proposals create a more flexible approach to joint tenancies and provide additional help the victims of domestic abuse from a housing perspective. CHC also believes

¹ Measuring the Economic Impact of Welsh Housing Associations, November 2012

that the Bill will bring improvements for landlords and occupiers and favours Option 3 as outlined in the Explanatory Memorandum.

Specific Issues

Occupation contracts

The benefits of the occupation contracts are that:

- they replace the many existing tenancy and license types which are complex and confusing
- they allow for identical contracts for council and housing association tenants.
- they are model contracts approved by the Government which will make private renting easier, cheaper and more flexible.

However, in supported housing we feel strongly that:

accommodation categorised as shared or very temporary accommodation should retain the ability to use excluded licences for the duration of an individual's occupancy, due to the difficulties in managing risk to other occupants and staff.

long term supported housing (mainly for people with learning difficulties or living in accommodation designed for older people) should have secure tenancies and not standard contracts (with or without the extra management provisions for supported housing). This is important to prevent people in supported living schemes being moved around at the convenience of social care commissioners.

To avoid confusion the definition of supported accommodation should also be extended to include broadly "where the support has been commissioned by the local authority using Supporting People Programme Grant"

Succession Planning

CHC agrees that a fair and consistent approach to succession rights is important and will assist with homelessness prevention. However, the proposal to allow a carer to receive possession if they have given up their home is of much concern as experience suggests that there could be false claims which will be difficult to prove. If this is the case, then turnover of tenancies will be lower, adding to the pressures on an already limited supply of social

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housing. This also runs contrary to Welsh Government aims and objectives around increasing housing supply and improving services for tenants.

Abandonment

The proposals on abandonment are very helpful, in particular, the proposals for joint tenancies whereby tenants can be removed from a tenancy without a new one having to be granted e.g. in the case of a relationship breakdown. Abandonment frequently leads to the landlord having to seek approval of the court to repossess the property which takes times, is costly and adds to supply pressures.

Six Month Moratorium

We believe that ending the six month moratorium will encourage more private landlords to rent to social housing tenants particularly those seen as high risk. Many landlords let for an initial period of six or twelve months and most want to sign tenants for longer than this. It does not make financial or business sense for private landlords to evict in the first six months – exceptions to this may include circumstances where there is anti-social behavior (ASB) or rent arrears. Therefore it is unlikely that many tenants would be evicted before six months but removing the moratorium gives more flexibility to landlords dealing with ASB. To counter any malpractice we have argued for a licensing scheme in the PRS which will help with rogue landlords.

Prohibitive Conduct (ASB)

RSLs need to be able to take action against individuals who endanger other tenants through their conduct, so the proposals on anti-social behaviour are very much welcomed.

Unintended Consequences

Barriers and financial implications

While CHC welcomes the simplification of the legal framework, we are concerned that:

- These changes are ill-timed and will create more anxiety for tenants who are already grappling with welfare reform changes. It is unlikely that issues around welfare reform will be resolved by 2017 so we would urge Welsh Government to postpone implementation of these proposals until the roll-out of UC is completed.

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- The resource burden on landlords implementing the changes will be significant at a time when capital and revenue budgets are being cut. We also anticipate that the costs for Housing Associations will be far in excess of the estimated £660,356 included in Table 10 of the explanatory memorandum. While we appreciate that the intention is that implementation will happen in “one big bang” and that tenants won’t have to individually sign their new agreement - it simply comes into effect - the introduction of two contracts to existing contracts will require a significant amount of resource from landlords who will need to re-draft tenancy agreements and ensure all tenants are clear about their new rights and responsibilities. Landlords will be using face-to-face meeting to do this as part of best practice.
- While CHC will support the provision of good quality information and provide briefings for the sector this will not be a substitute for legal advice. Therefore we are cautious of Welsh Government’s assertion that legal costs will be significantly less on this basis.
- **Removal of mandatory grounds for possession (Ground 8)**
CHC acknowledges the reasons why it is proposed that Ground 8 is removed and we agree:
 - Ground 8 was only ever intended be used as a last resort. Therefore its use to date has been limited.
 - The mandatory nature of Ground 8 means courts are not able to take into consideration factors that may have contributed to any rent arrears. Non-payment of housing benefit due to an error or lengthy processing times is something Housing Associations will be aware of and would not use Ground 8 in these circumstances.
 - There have developments in human rights and equality law and these should be considered when landlords are considering using Ground 8. Where District Judges are unwilling generally to accept the mandatory nature of Ground 8 this is an issue with the District Judge not the mandatory ground.

There is a body of evidence which illustrates that welfare reforms are leading to rises in arrears despite the 8 week trigger.. Of particular concern are tenants affected by the bedroom tax, who are unwilling to move and are likely to very quickly accrue high levels of

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arrears. Increases in rent arrears and continued increases in court costs pose a real challenge for RSLs with large numbers of tenants on benefits. Excessive court costs combined with serious cases of arrears is a real concern and a business risk. While Ground 8 has only ever been used as a last resort, more RSLs have said that they will look to use Ground 8 and lenders have been clear that if rent arrears continue to rise then they may increase borrowing costs to reflect higher levels of risk. Increased borrowing costs and higher levels of arrears will be unsustainable for some RSLs long-term, which puts all tenants at risk of facing homelessness. The proposal to remove Ground 8 is therefore of much concern to CHC and we strongly propose Ground 8 should be retained as an option for serious cases of arrears.

Ground 8 also serves as an important reminder for tenants about the importance of paying rent.

CHC strongly disagrees that :

- abolishing Ground 8 is the only viable option for establishing a single secure contract. Local Authorities are not subject to the same lending constraints as RSLs therefore it is reasonable to argue for its retention for RSLs.

Conclusions

In summary, CHC welcomes the spirit and intention of the legislation, however, we have strong concerns about some of the proposals which we feel run counter to Welsh Government aims and objectives around increasing housing supply and improving services for tenants.

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Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and three fire and rescue authorities are associate members. It seeks to provide representation for local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

General principles of the Renting Homes (Wales) Bill and the need for legislation

2. The WLGA broadly welcomes the Welsh Government's Renting Homes (Wales) Bill, and has welcomed the opportunity to contribute to the development of the proposals which underpin the Bill along with other stakeholders.
3. The social and private rented sectors are playing an increasingly important role in the housing market. Rented homes play a particularly important part in addressing housing in Wales and we are very pleased that Welsh Government has decided to review and simplify the legal framework for rented accommodation, and the WLGA supports the need for legislation in this area.
4. An important aspect of improving the quality of the private rented sector, and making it a tenure of choice in Wales, is the clarification of the rights and responsibilities of landlords and tenants. We feel that the provisions set out in the Bill will largely achieve this.
5. In particular, the WLGA welcomes and supports:-
 - The simplification of the legal framework which will benefit landlords and tenants;
 - The development of model contracts which will bring together and clarify the rights and responsibilities of tenants and landlords;
 - The requirement for written contracts clearly setting out Key Matters, Fundamental Terms, Supplementary Terms and, where agreed, any appropriate Additional Terms;
 - The opportunity the legislation provides to address some of the complexities and unintended consequences of the current legislative framework; and
 - The removal of "Ground 8" giving mandatory possession in cases where tenants of Registered Social Landlords have 2 months rent arrears.
6. We fully support the proposal to introduce a single secure contract for all social housing tenants. This will reduce complexity and the scope for misunderstanding, and will improve equity between tenants of the two social housing sectors. This is consistent with other Welsh Government policies (e.g.

rent policy) to better align the two sectors. In basing the secure contract on the current local authority secure tenancy, this ensures that the rights of social housing tenants are "levelled up" and not down, and the rights of existing local authority tenants are protected.

7. It is entirely appropriate that this equalising of the arrangements between landlords and tenants in the two social housing sectors, including the standardising of possession and eviction arrangements in cases of serious rent arrears
8. The WLGA welcomes the establishment, for the first time, of a legal framework for supported housing, and takes the view that the provisions within the Bill in this area strike an appropriate balance between ensuring sufficient flexibility, given the particular challenges of the many models of, and settings for, supported housing and the need to ensure adequate security of tenure for some of the most vulnerable tenants. The arrangements in relation to temporary exclusions from supported accommodation and mobility are also welcomed.
9. However, the WLGA has significant concerns that the provisions in **Part 9 Chapter 5** effectively remove the current moratorium on private sector landlords seeking possession using the "no-fault" grounds during the first 6 months of a tenancy, and this will diminish opportunities for local authorities to use the power to discharge their duties to homeless households by securing accommodation for them in the private rented sector, given the requirement in the Housing (Wales) Act 2014 for the local authority to be satisfied that "the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months."
10. Removal of the moratorium effectively reduces the rights of tenants in the private rented sector in Wales and undermines efforts to improve the quality of the private rented sector, and to promote it as a tenure of choice.
11. The main reason for households becoming homeless is loss of accommodation from the private rented sector. This approach will do nothing to reduce or prevent homelessness, and will have resource implications for local authorities and partner agencies as the time taken to achieve positive outcomes for households will be longer, and some households will be required to spend more time in temporary accommodation.
12. We welcome the provisions to simplify and reduce the time taken to deal with the abandonment of a property by the tenant. However, given that there are many legitimate reasons for a tenant to be absent for a period of time – e.g. admission to hospital or visiting/caring for relatives, etc. – it is appropriate to place a clear duty on the landlord to make such enquiries as are necessary to be satisfied that the contract-holder has, in reality, abandoned the property and is not absent for some legitimate reason.

13. The WLGA supports the provisions which will enable 16 and 17 year olds to become contract-holders. There are many instances where it is necessary for a young person to live independently, and we welcome a legal framework which removes any barrier to a young person establishing a home in the rented sector.

Potential barriers to the implementation of these provisions and whether the Bill takes account of them;

14. We have not identified any barriers to implementation which have not been taken into account within the Bill.

Any unintended consequences arising from the Bill?

15. As described above, it is the view of the WLGA that the removal of the 6 month moratorium effectively reduces the rights of tenants in the private rented sector in Wales and undermines efforts made through the Housing (Wales) Act 2014, and elsewhere within the Renting Homes Bill, to improve the quality of the private rented sector, and to promote it as a tenure of choice. This runs counter to the approach adopted within the Bill to "levelling up" the rights of tenants in the social rented sector.
16. Removing the moratorium does not support efforts to reduce and prevent homelessness, and is likely to hamper the efforts of local authorities and their partners to do so in seeking to fulfil their duties and responsibilities in relation to Part 2 of the Housing (Wales) Act 2014.
17. The Housing (Wales) Act 2014 requires local authorities to be satisfied, when using private sector accommodation to discharge their duties to a household that is either homeless or is threatened with homelessness, that "the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months."
18. By reducing the supply of private rented sector accommodation where the local authority can be satisfied that this is likely to be the case, efforts to prevent homelessness from occurring, or ending a household's homelessness, are likely to take longer, and be more difficult, than would otherwise be the case. Such a scenario will inevitably have resource implications for local authorities resulting from greater staff input to achieve successful outcomes, and households spending longer periods in temporary accommodation.
19. The main reason for homelessness is loss of accommodation from the private rented sector. By reducing tenants' security in this tenure, we expect that removal of the moratorium could lead to an increase in homelessness.
20. Ending the moratorium runs the risk of sending a clear message that private sector tenants have less security in Wales than is the case in England. This

could have the unintended consequence of attracting investment from less desirable private landlords into Wales.

21. Similarly, the clear message to tenants, and prospective tenants, given by removing the moratorium is that there is reduced security in the private rented sector. This is likely to lead to a lack of confidence that other rights will be adequately enforced within the private rented sector, and will work against legislative and non-legislative efforts to make this a popular tenure of choice in the future.

Financial implications of the Bill

22. In addition to the costs for Community Landlords set out in the Regulatory Impact Assessment, there will also be further costs for all local authorities (whether landlords or not) in meeting the training requirements for staff involved with housing advice, housing options and housing enforcement, in order to ensure that the changes to the legal framework are fully understood and that anyone approaching a local authority for advice or support in relation to their housing circumstances receives the most appropriate help or advice. Additional costs associated with longer periods in temporary accommodation, as described above, for homeless households are also not identified within the Regulatory Impact Assessment.

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Introduction

Cymorth Cymru is the umbrella body for organisations working with marginalised and excluded people in Wales.

Our **vision** is that all people in Wales have the right to live safely and independently, managing their own lives in their own homes

Our **mission** is to connect, strengthen and influence service providers, policy makers and partners to:

- Prevent homelessness
- Improve the quality of life and choices for the people our members support.

Our **objectives** are to:

1. Use evidence-based research to effectively influence policy formulation and implementation
2. Strengthen the capacity of member organizations to increase their impact by connecting them with wider issues and debates within the UK, Europe and elsewhere, convening events that contextualise and share learning
3. Provide high quality and tailored membership and consultancy services, identifying risks for the membership
4. Challenge public attitudes by campaigning with others on key issues that affect the people our members support.

Our main **policy areas** are

- Homelessness, housing related support
- Social value care provision
- Emerging themes from our two core areas
- Joining up across related policy areas

Our **120+ members** support people who are marginalised, isolated or experiencing housing crisis, including:

- people who are homeless, or at risk of homelessness
- families fleeing domestic abuse
- people dealing with mental or physical health problems, or learning disabilities
- people with alcohol or substance misuse problems
- refugees and people seeking asylum
- care leavers and other vulnerable young people, and
- older people in need of support
- offenders and those at risk of offending.

This list is not exhaustive, and individuals may often face a range of challenges that make it difficult for them to find or maintain a stable home and take control of their lives.

Cymorth Cymru's members help people address these issues, supporting them to find and maintain safe accommodation, fulfil their personal potential and feel confident making choices about their future. Our members work across policy areas to assist marginalised and excluded people and to promote a shared understanding of the key role that housing plays in promoting well-being.

Consultation response

Cymorth Cymru warmly welcomes the Renting Homes Bill. The steps toward providing clarity for all tenants across Wales are a positive move. All too often the complexity of tenancy law leads to legal interventions to rectify situations. The complexity of law can also be disempowering for all people in Wales – particularly those with more chaotic lives, who might find it harder to navigate the systems and processes. Having a Bill that introduces a simpler approach and clarity is a very positive step.

We do have some concerns more broadly about the security of tenancies for those in the private rented sector (PRS), and we know that these have been picked up by Shelter Cymru as well as by Cymorth. This is of particular concern for us as, in light of the recent Housing (Wales) Act, local authorities will be able to discharge their homelessness duty through using the PRS. On the one hand this Bill will, in simplifying the system, benefit the people we represent by helping them and their landlords understand their rights and responsibilities. However, we strongly question whether ending the 6-month moratorium, for instance, will encourage more landlords to accommodate people with chaotic lives. In our view it risks increasing instability for those who need a more secure environment to flourish.

We have limited our response to key areas, particularly those that intersect with the interests of the individuals our members work with – such as domestic violence and antisocial behaviour. We have also focused particularly on the area of supported housing, as this is where the majority of our members have expressed views and comments.

There are areas throughout where we hope that the guidance that is issued later in the process will clarify several questions of concern. We have, where possible, noted these clearly.

This Bill provides an opportunity for Wales to take a lead in the UK, ending a complex, inefficient system whilst retaining the flexibility so that organisations can continue to provide services that encourage individuals with the most chaotic lives to retain their independence. For that reason, Cymorth Cymru has had to be alert to potential unintended consequences posed by this Bill. We commend the work done by the stakeholder groups and welcome the opportunity to contribute further to the Bill by working with the Committee at this stage.

We look forward to giving evidence to the Committee on the 6th May.

Welcomed areas

In particular, we are in clear agreement with the Bill, with respect to:

- The new secure tenancy based on the current secure tenancy used by local authorities, etc;
- The new standard contract based on the current assured shorthold tenancy;
- The benchmark tenancy to be used by all landlords, as this will provide clear consistency;

- We re-iterate our point in the consultation on the White Paper that there should be an easy read version of these tenancies – and that we are ready and willing to assist with this if needed;
- We absolutely support the introduction of the Prohibited Conduct term in all contracts, with a few specific additional comments to be explored further in the response;
- We absolutely support the proposals made relating to joint tenancies, again with a few specific comments to be explored further below;
- We agree with the proposals to allow 16 and 17 year olds to rent in the same way as everyone else, but would suggest additional safeguards either in the Bill itself, or in guidance afterwards;
- We establish in greater detail our response to supported housing below.

Antisocial behaviour and domestic violence

We can see how the Bill could be used to ensure swift responses to antisocial behaviour and to ensure that those experiencing domestic violence are protected (and we see that this is to be developed further in guidance). We also acknowledge that the signal sent out through the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill will have a positive impact on individuals who witness or experience domestic violence.

However, we suggest that the Bill should take the opportunity to make this more explicit. Whilst of course it can be assumed that domestic abuse is part of Prohibited Conduct, and that the protections in the joint tenancy section ensure that people at risk of domestic abuse are now more protected than before, we consider that landlords in particular would benefit from this being an explicit part of the Bill.

We recommend that an explicit reference to domestic abuse be added to both prohibited conduct sections (Part 3, Chapter 7 and Part 5, Chapter 5). Whilst we understand that domestic abuse could be categorised under “nuisance” and “annoyance”, there should be an additional point for “abuse”, to increase clarity for landlords and tenants in this area.

Additionally, we would like to see it made clearer in the Joint Tenancy section (Part 3, Chapter 5) that there are protections in place for those at risk of domestic abuse. If this is not appropriate, it should be made clearer in the guidance to be published later.

With regards to antisocial behaviour, we believe that the particular needs and demands of individuals with chaotic lives require specific mention in the guidance when published – as well as much wider awareness training for landlords. For example, tenants with mental health problems might present behaviour that is antisocial, but they might be exhibiting a need for support rather than anti-social behaviour. We hope that a system can be put into place with training and awareness that encourages landlords to seek other options where an additional need is involved. We would be ready and willing to look at developing this further as an organisation.

Points to be explored specifically in any guidance published after

There are points noted earlier which we would like to see developed further in guidance, as we understand they are not appropriate for the legislation itself. These include:

- Guidance on Prohibited Conduct and approaches to resolving anti-social behaviour without possession. We would advocate as noted above for clear best-practice steps in the guidance as to how landlords can work best to bring in additional support by contacting relevant services. This will be even more relevant given the ability of local authorities to discharge their homelessness duty into the PRS.
- Specific guidance on 16 / 17 year olds renting is needed, so that they are made aware of the risks of joint tenancies. We would be very concerned that without adequate awareness-raising for this group, there could be an increase in homelessness due to unpaid rent, for example. Clear guidance, an easy-to-access guide to contracts, and other steps, should help to reduce this, as well as simple explanations of what is expected of tenants.
- Specific guidance on joint tenancies, particularly with regards to an individual being liable to the entire rent if another leaves, will be needed. In addition (as noted above) we believe the guidance should draw specific reference to domestic abuse and processes / best practice in this area.

Supported housing / accommodation

We welcome provision of a legal basis under which supported housing can operate in terms of tenancies. As with our response to the White Paper, we recognise that both the Law Commission and the Welsh Government have worked hard to ensure that the complex nature of supported housing is reflected in the Bill. We particularly recognise the increase from the 4-month limit to 6 months, with a potential for increasing the duration through request to the local authority. This will make a considerable difference to the provision of support in Wales (we have provided evidence for this, in terms of case studies, in Appendix 1).

There are some specific points we would want to mention with regards to this section.

Excluded licences and temporary exclusions

Our conversations as part of the stakeholder group with this Bill have made it clear that we would want to see the very short term, shared accommodation, being able to use an excluded licence for the duration of a person's stay. Our concern here was that if this type of accommodation were to use a tenancy it is likely they may be forced to turn away individuals with a more chaotic lifestyle for fear that they could not protect residents due to being unable to quickly remove a person who could be endangering others.

Whilst we would still maintain our preference for the licence approach, we do acknowledge that the proposals (Part 8) as they are have heard the concerns of providers in this matter, and go some way towards addressing the issue.

This is an area where we had to ask our members, and ourselves, some very difficult questions. Cymorth Cymru is not often in a position where we are advocating any reduction in the rights of individuals. In this particular instance, however, we have had to take a very clear view. Given the nature of this form of accommodation, and the often chaotic lives led by individuals who reside there, the ability to temporarily exclude residents is vital for the continued safety and progress of other residents.

In order to consider our position here, we should consider the individuals who use these services. Often they might only just be starting their journey towards independence. They may be recovering from alcohol or drug addictions (or still battling them); they may be rebuilding after a mental health condition or taking the first steps back into society after being in prison. They may all be vulnerable in some way, and sometimes a shock or stress could send them spiralling back into a worse situation. For that reason it is absolutely essential for the health, well-being and eventual independence of other residents that if one resident is putting others at risk, they can be removed at least temporarily.

Please note: we can provide examples of where this could be an issue from our members, on request.

Definition of supported accommodation

We would suggest a small addition to the definition of supported accommodation. At times, the local authority might 'commission in' support services for an individual, and we would not want that element of support to be left out. Therefore, in Part 8, 143, 2(c), we would suggest that the text change to read: "the landlord or charity (or a person acting on behalf of the landlord or charity, or where the support has been commissioned by the local authority using Supporting People Programme Grant)".

Definition of "support services"

Finally, we would query the definition of support services, found in Part 8, 143, 4(c), which suggests that support services include "supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason." We find this particularly problematic, as many in this group should be encouraged to live independently regardless of their support, in secure contracts. Examples of this include individuals with learning disabilities, who may require support, but who should not be given the same sort of contract held by those in short-term, shared accommodation. Either this definition should be amended, or a separate point inserted elsewhere into the Bill, which makes it clear that those in longer-term supported housing should have secure tenancies and not standard contracts (with or without the extra management provisions for supported housing).

Conclusion

Cymorth Cymru welcomes this Bill and believes it represents a significant opportunity to simplify and clarify an area that has until now been overly complex and difficult to grasp, as long as the particular needs and requirements of support providers are met so that they are able to continue supporting the most marginalised and excluded individuals in Wales. We also await the eventual Guidance around the Bill eagerly, and we hope it will address more of the details around how specific areas of the Bill would work in practice.

This is a singular opportunity to get this right for Wales, and we have been grateful for the opportunity to respond, and to be involved.

Appendix 1

These case studies serve to provide evidence as to why it is important that there is an option to extend the duration of a standard supported contract. We are pleased that this point has been recognised.

Case Study: Service User A

7 month stay in 'very short term supported accommodation'

Service User A had a disability which limited the housing options available to her. Her disability included sight problems with an assistance dog.

Service User A felt safe in refuge and understood her entire surroundings. She was supported through every element of the building initially, shown where each door/ item/ service was and how to navigate around the facility. It took her a few support sessions to take this in and had regular support from the other residents as the communal setting of a refuge lends itself to this type of support.

She was offered temporary accommodation but this was not suited to her disability and was intended as a short term measure before suitable accommodation was found.

The provider agreed with the local authority that her need was such that to make her live in a temporary accommodation unit for an undefined time, only to move to a more suitable long term property would be unsuitable and would unfairly impact upon her due to her support needs. They felt that it was a matter of upholding good practice on equality and diversity issues that she was not forced to move more times than was necessary as she would be more disadvantaged than most by this.

Service User A stayed with the provider until a suitable property was found and, having had acute awareness of her needs, they were able to support her into her new home and local services very effectively. Had she had left their service and gone into temporary accommodation, there would not have been the same level of support provided to ensure she understood her surroundings when moving into more permanent accommodation.

The service user exited the service feeling confident and well supported.

Case Study: Service User B

6 month stay in 'very short term supported accommodation'

Service User B is a young mother with young child, with a history of domestic abuse. Initially she presented as lower needs than most and was moved from a 24hr staffed unit to a self-contained unit.

Service User B began being evasive with her support worker which culminated in the provider discovering she had abandoned her child one day in the unit. They immediately informed Children's Services who accommodated the child. Service User B presented as non-concerned that this was an issue, resulting in Children's Services reluctance to return the child.

Service User B had resumed relationship with the perpetrator temporarily and had left the accommodation. After offers of support and agreement of Children's Services it was agreed that Service User B could return to the 24hr staffed unit. After continued engagement with the provider and Social Services, the child was allowed back into her care, on the understanding that she would remain within the 24hr unit and be monitored by them.

This continued for several months. Because of the seriousness of the child protection issue, the child would have not been able to remain in her care without the provider's 24hr staffed unit.

Working with Service User B, the risks to the child reduced and the provider was able to satisfy Children's Services that she was no longer a risk to her child. She was then able to access accommodation, which they had delayed due to the circumstances. She was re-housed approximately 6 months from entry into the service, and was able to keep her child.

Case study: Service User C

Service User C came to the UK in 2002 on spousal Visa. She was living at the family home with her mother-in-law, father-in-law, her husband, his brother and his wife.

During the first year of her coming to the UK the relationship between her and husband was fine, but after two years their relationship started to deteriorate due to the husband's family not accepting her. Service User C's Visa was never renewed and she was therefore living in the country illegally for 10 years, unknowingly. She also had no English language skills.

Service User C was subjected to physical, verbal, financial and emotional abuse. She was forced to live in the house as a maid and was made to do all the house chores for everyone including her brother in law and their children. Her movements were restricted; she was not allowed to go out of the house unaccompanied and was not left alone for any appointments or meetings so she had no opportunity to express her situation or anxieties to any professionals.

Service User C was not registered with a GP or Dental Surgery. On one occasion when she required dental treatment she pulled the tooth out herself to get rid of the pain. Contact with her immediate family in the UK and at home was minimal and controlled. She was not allowed to make contact with her family, when they contacted her she was not left alone at any time during the conversation. She lived in these conditions for 12 years.

Her husband's family made her life unbearable for her to live and they started to put pressure on her constantly to leave the house, knowing very well she had nowhere to go. The pressure became so much that she took courage to call her uncle in Birmingham to ask him for help when the family were out one day. She had no awareness of how to access help or how to get out of her situation.

Service User C's uncle made contact with the support provider to ask for help as he was unable to accommodate or support her.

They assessed the situation and offered her support by admitting her into the refuge. She was supported initially with food and essentials as she had no recourse to public funds. It was established that she would qualify for the DDV Concession Grant through the Home Office and was assisted to apply. She was successful in receiving this grant on the 31st July, 2012 which enabled her to access public funds for 3 months.

During this time she was assisted to access an immigration solicitor who helped to apply for Indefinite Leave to Remain (ILR). The decision granting Service User C ILR was received from the UKBA after three more months.

It took approximately 2 months for her to be able to access other services fully after she was granted ILR in the UK. Service User C had to remain in the refuge for further 3 months whilst her benefits and housing were being processed. During her time in the refuge she accessed ESOL and numeracy classes and also engaged in other community activities.

Service User C re-built her confidence and self-esteem and was enabled to live independently out in the community. However, she was unable to access social housing and found it difficult to find accommodation in the private sector due to her limited income for deposit and bond.

Who we are

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

What we do

Tai Pawb works closely with the Welsh Assembly Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

Tai Pawb's vision is to be:

The primary driver in the promotion of equality and diversity in housing, leading to the reduction of prejudice and disadvantage, as well as changing lives for the better.

A valued partner who supports housing providers and services to recognise, respect and respond appropriately to the diversity of housing needs and characteristics of people living in Wales, including those who are vulnerable and marginalised.

For further information visit: www.taipawb.org

Charity registration no. 1110078
Company No. 5282554

Introduction

Tai Pawb welcomes the opportunity to respond to this consultation and the invitation to provide oral evidence to the Local Government and Equality Committee's enquiry.

Due to natural development and diversification of the sector and wider societal changes the issue of tenancy and tenancy law has become a very complex area. Therefore, like many of our colleagues across the housing and third sectors, we welcome the creation of a new rental system for rented homes in Wales. We hope that this new approach will ensure that it is easier for both tenants and landlords to understand and execute their rights and responsibilities in relation to

renting their homes. This is particularly important as the current, overly complex system, could be significantly disadvantaging people from a variety of backgrounds. For example, people from non-White British backgrounds who compared to White British people are more likely to use the PRS¹. These groups can face considerable language and cultural barriers in accessing accommodation, while people from other protected groups such as disability, age, sexual orientation, gender reassignment, and religion or belief can face other types of barriers when accessing accommodation. We hope that by simplifying the rental system the current unintentional discrimination could be removed for these groups as well as others.

Occupation Contracts and Landlords

The adoption of two forms of contracts and the subsequent ability to provide model contracts will make it clearer for tenants and landlords. However we have some concerns that the Supported Secure Contract is not seen as a third form of occupational contract. Those people who are likely to be provided with this type of contract are often some of the most marginalised within our society. Part of the rehabilitation process for this group of people is to move them on from this level of intensive supported accommodation into a position where they are able to maintain their own tenancy (potentially with less support). The suggested approach in relation to occupation contract classification, albeit unintentionally, further underlines the distinction between this group of people and anybody else and could further marginalise them.

ASB and Prohibited Conduct

While we welcome the work which has been undertaken to ensure a wide variety of undesirable behaviours fall within the remit of the definition used currently in the Bill we still have a number of concerns. As we mentioned in our official response to 'Renting Homes – A better way for Wales' the term we feel it is key that abuse such as economic, psychological, emotional and other coercive behaviours are also covered by the terms 'ASB and Prohibited Conduct'.

The proposed wording: "conduct capable of causing nuisance or annoyance²" is very vague. There is potential that the test applied to decide if conduct falls within this category could be open to abuse and unintentional bias for example in relation to domestic abuse where somebody subjecting a victim to psychological abuse the notion of 'nuisance or annoyance' seems to fall far short of the reality. In complete contradiction to this the notion of 'nuisance or annoyance' could mean that repeat low-level annoyances such as parking space issues could result in being defined as ASB.

The wording for the definition for ASB and prohibited conduct is of particular importance when we consider that tenants of a community landlord (RSL) could have their tenancy demoted to periodic standard contract as a result of breach of tenancy, in other cases they may be evicted. While we recognise the importance of, and support the ability for, landlords to use this tool we are concerned about the potential for bias and unfair treatment for some people from certain groups. In order

¹ Census 2011, DC4201EW - Tenure by ethnic group by age - Household Reference Persons, Wales stats only

² Renting Homes Bill, Section 3 Chapter 7

to protect people we would recommend that an amendment is made to reflect 'harm caused to another person' because of said nuisance or annoyance. This approach would remove any potential for powers to be used irresponsibly by landlords for relatively minor nuisances or annoyances. We would also recommend that you look to reflect the wording for domestic abuse in other legislation to ensure that the letter of the law reflects the spirit it intends (and which we fully support). We would also encourage you to consider issues concerning burden of proof – strong statutory guidance is needed in this area.

Deposits

We welcome the direction of travel with relation to deposits for joint contract holders. However colleagues in the PRS have raised concerns relating to the ability for the existing infrastructure to handle these potential changes. We would highly recommend that this is investigated further to ensure that the current deposits schemes will not fall foul of the new legislation due to the technical restrictions of the systems they are using. We feel this should be addressed through consultation to ensure the implementation timeframe takes account of any changes which might be needed.

In relation to the deposits paid where there are joint tenancy holders consideration should be given to instances where a joint contractor removes their proportion of the deposit upon ending their contract, in particular instances where there is proven domestic abuse. There needs to be clearer legislation regarding the position of the tenant and security of tenure relating to this.

Variation to rent – periodic standard contract

While we welcome that the face the Bill has restricted rent increases to one per annum we have significant concerns that the Bill, as it stands, appears to erode the current rights of tenants in Wales in other areas in connection to rent. It is our understanding that the new Bill proposes that rent increases for periodic standard contractor-holders can be issued from two months after the contract was signed. It also appears that this, initial rent increase, could be for any amount and the only option the tenant has is to accept this or to give notice and leave their home. This significantly worsens the current rights of tenants in two ways:

1. Currently tenants cannot have their rents increased within the first year of their tenancy
2. Tenants have the right to apply to the Rent Assessment Committee which has the effect of delaying any rent increase until the matter has been decided.

As we have indicated previously the PRS has a significant number of people who are from non-White British backgrounds within it, the Bill also provides for younger people to be contract holders, and the Housing (Wales) Act 2014 has enabled the PRS to be used more often for more vulnerable people. We are particularly concerned that unscrupulous landlords may entice vulnerable people into contracts with low rents only to raise rents significantly after the first two months. Tai Pawb is concerned with the potential for vulnerable tenants to be extorted under the new provision. Under the conditions of the Bill, as it now stands, landlords could attempt to recoup money spent on repairs or choose increase rents once a property has been adapted (with no financial contribution from the landlord) for a disabled person

knowing they are unlikely to be able to secure other suitable accommodation. The current Bill would not prevent this and with no recourse to the Rent Assessment Committee there appears to be no protection for tenants from such unscrupulous behaviour.

Supported Standard Contracts

Please also see the section above on 'Occupation Contracts and Landlords'.

We are, broadly, in support of the inclusion of the Supported Standard Contract. We recognise, in many respects, this serves to codify existing practices within the sector to which this applies. However, we have two main areas of concern in relation to the Supported Standard Contract.

1. We recognise and understand the importance for some types of provision to be able to issue temporary exclusion notices. While we support this ability, in principle, we would like to see the Bill strengthened to protect those people who may be excluded. As we interpret the Housing (Wales) Act 2014 section 55 these people would be classified as homeless. Given the nature and vulnerability of these people we would like to see the Bill amended to place a duty of care on the support providers to help assist these people find alternative accommodation for the period of exclusion.
2. Reading the definitions within the Bill for Supported Accommodation which states support can be "supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason." We have concerns that supported living could potentially fall within this. Supported living currently, tends, to refer to a small group of people living together in a property each with their own tenancy but there is support provided. Our concern is this group of people they could have their current tenancy rights eroded. We strongly feel in these instances these people should have their tenancies converted to a secure or standard contract in line with provision the standard provision. We are also concerned that new people who would benefit from this type of accommodation are not automatically given a Supported Standard Contract where they should be provided a secure or standard contract when they enter.

Abandonment

We feel the proposed approach to abandonment could place vulnerable tenants at significant risk. Within the proposal the landlord is required to make enquiries to ensure the property has been abandoned and also to issue a notice to the tenant. If the landlord is satisfied, after 4 weeks, the property has been abandoned they can take actions needed to secure and dispose of the property as they wish. The implications of this proposal is that tenants are expected to inform their landlord of any extended periods of absence from the property for some people, such as those who may be admitted to hospital, this is not practical or reasonable. Even with the ability for the court to overturn a decision and instruct a landlord to provide suitable alternative accommodation for many people, either due to their needs for accessible / adapted housing or due to the limited housing a landlord may have, there is a significant risk that alternative suitable accommodation will not be available.

In specific regard to the notice issued by the landlord, there is no obligation in the legislation for this to be in a format requested by the tenant or to be issued to a support worker. It would also be beneficial for the contract issued to specifically state the need to inform the landlord of any expected absences (over a certain length) and an obligation for the landlord to provide indication of receiving this to avoid the potential for unscrupulous behaviour on both parts. If such provisions were included within statutory guidance then this would help. Overall clearer guidance on the burden of proof might also be useful for the appeals procedure; however our fundamental concern is that the 4 week period may not be long enough and the judicial oversight through the appeals process may come too late.

Variation of Contract – Periodic Standard Contract

The Bill proposes at section 126 that a landlord may vary a contract on agreement with the contract-holder. If contract-holders does not agree to this variation they must provide notice of termination to their landlord, if they fail to do so within the notice period applicable to contract variation (2 months) the landlord may seek possession.

We feel the process proposed within in the Bill is an improvement on the current situation where variations of contract are only possible through issuing an eviction notice then a new tenancy. The new process allows for the potential negotiation of terms between the tenant and landlord. However we recognise that some people would not be able to enter into such negotiations without support and this may put additional pressure on services such as Shelter Cymru and the Citizen's Advice Bureau. We also recognise that some unscrupulous landlords might use intimidation to ensure tenants agree variation of terms by threatening eviction if they do not, or may choose to frequently vary terms amounting to harassment of the tenant (as landlords may vary terms other than rent as frequently as they choose to)..

Improving Home Safety

We welcome the inclusion of a landlord's obligation to repair within the contracts, along with protection from retaliatory eviction. However we have a number of concerns with regard to the current proposals within the Bill:

1. Equality Considerations – currently if a landlord cannot gain access to a property in certain circumstances it is possible for a landlord to issue eviction notices. We are concerned that there is no protection for vulnerable tenants or those from diverse backgrounds. As the Bill stands currently there is no obligation for the landlord to ensure that the attempts to enter the property are reasonable and take account of the needs of the tenant, for example to have a carer, support worker, or chaperone present. While this could be addressed either in the Bill or in statutory guidance we feel this must be addressed before implication.
2. With the current variation to contract provisions (as discussed earlier) there is no protection to ensure that rent rises are not to cover the cost of repairs nor they are so high as to be, in effect, simply retaliatory eviction by another mean.

Security of Tenure – Periodic Standard Contract

It is currently posited that the standard default position for the PRS in Wales will be the issuing of a Periodic Standard Contract. This contract option has also removed the six-month moratorium. We feel it is likely that the most vulnerable tenants will be issued this contract as default with only those perceived to be 'less risky' tenants offered the more secure fixed term standard contract. Our concern is as more vulnerable tenants, including younger tenants, those from diverse cultural and national backgrounds, and disabled people, need to use the PRS due to low availability within the social rented sector this could create a two tier PRS. We are concerned that the periodic standard contract is seen as a, potential, way of encouraging private landlords to rent to people they might not previously have considered. In effect this could be seen to suggest to landlords that 'if it doesn't work out' it is easy to remove these people from the property in a relatively short timeframe. We feel strongly this sends the wrong message to the PRS and places vulnerable people from diverse backgrounds in particular jeopardy of a revolving door of short term tenancies resulting in them being unable to put down roots, and having significant impact on community cohesion.

This approach seems to be a contradiction to the spirit of the rest of the legislation which is strongly based on a consumer approach. The current proposals in relation to Periodic Standard Contracts means that tenants can be kept on these indefinitely meaning they are never more than two months notice away from homelessness (including within the first 6 months of their tenancy) this makes it very easy for a landlord to, in effect, use a 'no-fault' eviction route instead of a fully transparent discretionary ground which could have judicial oversight.

Security of Tenure – removal of 'Ground 8'

As noted in our consultation response 'Renting Homes – A better way for Wales' this power is not widely used currently, despite the increase in rent arrears due to changes in welfare benefits.

The removal of 'ground 8' in relation to the Secure Contract and community landlords (RSLs) is welcomed by Tai Pawb as it levels the playing field between Local Authority Housing and Registered Social Landlords where inequity has existed in relation to rent arrears. We feel that the approach outlined in the Bill strikes the correct balance as we recognise that there may be times where eviction is the only course of action, in the face of serious rent arrears, and this can still be achieved through the discretionary powers of judicial oversight. We strongly support the notion that decisions to remove somebody's home should never be taken lightly or arbitrarily. Therefore the use of judicial oversight to take into consideration the individual circumstances we feel is the correct approach. We feel this protects vulnerable people who may accrue significant rent arrears through no fault of their own. In particular removal of ground 8 could be seen as proactively meeting the general duty within the Equality Act 2010 for example; in relation to those with significant mental health problems, those with language difficulties, disabled people who may not have accessible ways to pay their rent, younger people who may be entering their first tenancy, older people, and trans* people who may not have been corresponded with in the correct name.

Equality Considerations

We are significantly concerned that throughout the Bill there is no mention of the Equality Act 2010 or the requirements therein. We are particularly concerned there is no reference to this neither in relation to Anti-Social Behaviour and Prohibited Conduct nor within the notion of 'reasonable refusals' by the landlord. Specifically we are concerned that there is no mention of the protection afforded to Lesbian, Bi-sexual and Gay people when requesting joint tenancies.

Dispute Resolution

Like many of our colleagues, within the housing and third sector, Tai Pawb feels that recourse to the county court is not the most beneficial way to enter into dispute resolution. The costs are high and often the detailed knowledge of housing within the system is lacking. We feel that alternative dispute resolution provision should be explored to include mediation and the use of a specialised tribunal. In our opinion this could potentially save money, free up court time, ensure that judgements are fair and backed by expert knowledge, and could make access to housing justice open to many more people.

Appropriate powers in the Bill for Welsh Ministers to make subordinate legislation

It appears that there are appropriate powers for Welsh Ministers to make subordinate legislation. However we would like to, respectfully, remind the committee the importance of ensuring that all subordinate legislation is fully equality impact assessed and within this process there has been due consideration and active engagement with the people of Wales.

Agenda Item 4

Ymhlithwr i'r Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-12-15 Papur 6 / Paper 6

1. REMOVAL OF RENT PROTECTION: S.13/22 HOUSING ACT 1988

The Act proposes Occupation Contracts which in the Community Sector will generally be Secure Contracts and in the Private Sector will be Standard Contracts. Whilst the Act provides for a mechanism prescribed by Welsh Ministers to protect existing Assured and Assured Shorthold Tenants there is no such protection for Occupiers under new contracts.

Existing Local Authority Tenants were excluded from protection in any event under Schedule 1 of the HA 1988. This Act will put all Housing Association Occupiers on the same footing. This will encompass some 16% of the Housing stock (2013).

It has been argued that the Rents in the Community Sector are in any event subsidised and therefore artificially below Market Rents under the HA 1988 in any event.

Is that a good reason for removing the protection of the Act in both the Community and Private Rented Sector? The Right to apply to RPT is in itself a brake on Rent increases. If one of the intentions of the Act is to provide secure accommodation for tenants in both the Community and Private Rented Sectors to remove the protection of Section 13 means that tenants may be forced by

large increases in Rent demanded to move on after relatively short periods because they cannot afford proposed rent increases. The instability which this creates in people's lives could be partially checked by retaining the ability of tenants to apply to a RPT to assess a Market Rent in the Private Sector. This change would potentially affect 14% of all property in Wales (2013) in this Sector over time.

Applications under Section 22 are very rare (in the first 6 months of an Assured Shorthold Tenancy). In 2013/14 there were 12 under Section 13. In 2014/15 there were 17.

Often however, as will be seen from the number of cases dismissed or withdrawn (5 in 2013/14 and 8 in 2014/15) cases are brought based on a misconception as to the Tribunal's powers particularly in the Community (Housing Association) Sector. Tenants do not understand that Housing Association rents are less than Market Rents and that we can only set a Market Rent. Removing the right to Appeal in that sector may not therefore make a material difference

However where a Tenant can often be protected is where they are Assured and Assured Shorthold Tenants in the Private Sector and it is assumed this protection would continue under the mechanism prescribed for existing Tenants. There will however be no protection for either Secure or Standard

contract holders in the future. I question whether this a judicious move in the current climate where there is huge pressure on housing and restrictions on borrowing.

2. VARIATION OF RENT: SECTION 104 AND SECTION 123

The procedure outlined in the Act does not prescribe a minimum period before a notice varying the rent can be served on the first occasion. S104(3) says the Notice may prescribe “any date”. One can envisage a situation where an unscrupulous landlord sets a low rent to get the Tenants “hooked” and then when the Tenant has gone to all the expense of moving in, serves a Notice increasing the rent. At that point there is no protection and the Tenants only recourse may be to move out. I would suggest the minimum should be six months at least.

3. VARIATION OF “OTHER CONSIDERATION”

“Other consideration” presumably encompasses what one would now refer to as a “variable service charge”. Again the first Notice can be served specifying any date with no minimum period required.

More widely Tenants currently paying a variable service charge have the protection of the Landlord and Tenant Act 1985. Presumably it is not intended that the effect of this legislation is to remove that protection.

4. RENT ACT SUCCESSION/S186 AND Sch 10 LOCAL GOVERNMENT AND HOUSING ACT 1988

On a second succession under the Rent Act 1977 and under the LGHA on the expiry of a long lease the current law prescribes that the Tenant becomes an Assured Tenant under a Market Rent. The RPT has the power to determine that Rent and under Sch 10 the Terms and conditions of the Tenancy. Neither a Rent Act Tenancy or a long tenancy will become an occupation contract. Some provision needs to be made to cover these albeit rare situations.

5. RIGHTS OF APPEAL

The Act gives “Tenants” generally a wide range of rights to make an application to a Court to enforce their rights. It is questionable whether in certain circumstances it would be more appropriate that the Tribunal were given jurisdiction. Some examples might include:-

- Review of a Notice by a Community Landlord that a contract is **NOT** a secure contract.
- Failure to supply/incorrect written statements.
- Succession Disputes
- Applications for Consent

- Determination of whether a property is fit for human habitation given the particular reference to the Housing Health and Safety Rating System in Section 94(2).

6. HOUSING WALES ACT

What is the inter play between this legislation and the licensing regime provided for by Part 1 of the Housing (Wales) Act?

Would a failure to supply a written statement within the required period be deemed to be a contravention which would fall into paragraph 3(c) of Section 20 re: the fit and proper person test?

Would a failure to supply a written statement be sufficient for a licensing authority to revoke a license under S.25(i)?

Would a licensing Authority make compliance with the new Bill an automatic condition of all Licenses?

Given that the Tribunal has jurisdiction to deal with Appeals in relation to Licensing and given that the Tenant is entitled to deduct any compensation awarded for breach of this requirement from the Rent would it make more sense for the Tribunal to deal with such breaches rather than a Court?

As no criminal offence is created (a failure to comply merely attracts compensation) how would a licensing authority be made aware of such a

breach? Where a case is successfully pursued by a Tenant in a Court/Tribunal should there be a duty on the Court/Tribunal to notify the Licensing Authority?

APPEALS

It should be noted that in so far as the RPT were to be given jurisdiction to deal with cases under the Act, Appeal would be to the Upper Tribunal Lands Chamber.

GENERALLY

The Act perceives that Landlord and Tenant enter into a negotiation regarding the form of the Contract. In my experience this is highly unlikely. In circumstances where pressure on the rental market is high and stock turns over very quickly it is highly probable that a Tenant will take what he is given.

The protection of the Act in prescribing certain conditions which cannot be altered offers some protection as does the condition that others cannot be altered to the detriment of the tenant but it is unrealistic to suppose that in most circumstances there will be any "negotiation" at all.

From a personal point of view having seen a draft of the proposed contract I think it highly unlikely that it will be read by an average tenant before it is signed. The report published on the Welsh Government Website contains a huge amount of information. Whilst the principle that all Occupiers should be

provided with a written contract is in principle a good idea a 26-30 page document which presumably will need to be provided bilingually is unmanageable. I appreciate that not all contracts will have to contain all that is in the proposed draft standard document.

Agenda Item 5

6 May 2015 – Papers to note cover sheet

Paper No:	Issue	From	Action Point
Public papers to note			
7	Historic Environment (Wales) Bill	Chair of the Petitions Committee	Call for the Welsh Government to Purchase Garth Celyn
8	Historic Environment (Wales) Bill	Deputy Minister for Culture, Sport and Tourism	Correspondence to the Chair providing supporting documents to the Bill
8 Annexe 1	Historic Environment (Wales) Bill	Deputy Minister for Culture, Sport and Tourism	Statements of Policy Intent
8 Annexe 2	Historic Environment (Wales) Bill	Deputy Minister for Culture, Sport and Tourism	Keeling Schedule: amendments to be made to the Planning (Listed Buildings and Conservation Areas) Act 1990
8 Annexe 3	Historic Environment (Wales) Bill	Deputy Minister for Culture, Sport and Tourism	Keeling Schedule: amendments to be made to the Ancient Monuments and Archaeological Areas Act 1979
8 Annexe 4	Historic Environment (Wales) Bill	Deputy Minister for Culture, Sport and Tourism	Managing Historic Environment Records in Wales – Statutory Guidance

Y Pwyllgor Deisebau
Petitions Committee



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-13-15 Papur 7 / Paper 7

Christine Chapman AM
Chair of the Communities, Equality and
Local Government Committee.
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
CF99 1NA

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Our ref: P-04-607

April 2015

Petition: P-04 -607 Call for the Welsh Government to Purchase Garth Celyn.

Dear *Chris*

You may be aware that the Committee have been considering the following petition:

This historic building and grounds are up for sale. Such is the importance of this building/grounds to Wales and its history we call upon the Welsh Government to do what's right and secure Garth Celyn for the Welsh people once and for all. About the year 1200, Prince Llywelyn ap Iorwerth constructed a royal home on Garth Celyn. To the east of the Llys was the newly endowed Cistercian Monastery of Aberconwy; to the west the cathedral city of Bangor. Between Garth Celyn and the shore the fertile farmland provided food for the royal family, members of the court, and the local community. The sea and the river had fish in abundance and there was wild game to be hunted in the uplands. The village of Aber Garth Celyn on the west side of the river was a bustling, thriving place. Travellers negotiating the dangerous Lafan Sands were given food and lodging in the valley. Goods brought by sea to the Port of Llanfaes were being distributed to other points on the mainland from here. Animals were herded along this routeway to and from the mountains. Grain was carted to the mill. The community came to attend services in the church. Pilgrims from far and wide walked the trackway and paused for refreshments. Bards came to recite poetry recalling the deeds of the heroes, the great defender.

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Ffôn / Tel: 0300 200 6375

E-bost / Email: SeneddDeisebau@Cynulliad.Cymru / SeneddPetitions@Assembly.Wales



At our meeting on 10 March, the Committee agreed to ask that you take this matter into consideration of the planned Heritage (Wales Bill).

Please forward your response to the Clerking Team at
SeneddPetitions@Assembly.Wales Yours sincerely

William Powell AC / AM
Cadeirydd / Chair


Ken Skates AC / AM
Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Deputy Minister for Culture, Sport and Tourism



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref:
Ein cyf/Our ref: LF/KS/0390/15

Christine Chapman AM
Chair of the Communities, Equality and Local Government Committee

 May 2015

Dear Christine,

Historic Environment (Wales) Bill

To support the Communities, Equality and Local Government Committee's scrutiny of the Historic Environment (Wales) Bill, which I introduced into the National Assembly for Wales on 1 May, I am pleased to attach Keeling Schedules, the Statement of Policy Intent and the draft statutory guidance, 'Managing Historic Environment Records in Wales'.

The Keeling Schedules present the relevant portions of the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990 as they would read if the amending provisions of the Historic Environment (Wales) Bill were enacted as introduced.

The Statement of Policy Intent provides information on the policy aims for the delegated powers within the Bill.

The draft statutory guidance, 'Managing Historic Environment Records in Wales' explains how we expect local authorities to discharge their new duties to create and keep up to date historic environment records.

The Historic Environment (Wales) Bill will be complemented by policy, advice and guidance that will reflect the Bill's measures and make additional improvements to the existing systems for the protection and sustainable management of the Welsh historic environment.

The following draft guidance documents have been published on Cadw's website (<http://cadw.gov.wales/historicenvironment/policy/historicenvironmentbill/guidancedocuments/?lang=en>):

- a revised chapter 6, 'The Historic Environment', of Planning Policy Wales;
- a new planning technical advice note for the historic environment;;
- 'Managing Change to Listed Buildings in Wales';
- 'Managing Change in World Heritage Sites in Wales'; and
- 'Managing Lists of Historic Assets of Special Local Interest in Wales'.

Formal public consultation on these documents will follow once the provisions of the Bill have been finalised.

By making these draft documents available now, I hope to help the Committee to see the Bill as the central element of an integrated package of measures to improve the sustainable management of the Welsh historic environment.

I trust the Committee's members will find all of these documents helpful and I look forward to providing oral evidence to the Committee in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours ever,

A handwritten signature in black ink, appearing to read 'Ken Skates', written in a cursive style.

Ken Skates AC / AM

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Deputy Minister for Culture, Sport and Tourism



Llywodraeth Cymru
Welsh Government

Historic Environment (Wales) Bill

Statements of Policy Intent

May 2015

1. Introduction

- 1.1 These statements of policy intent set out the current policy approaches for the subordinate legislation for the Historic Environment (Wales) Bill. Consultation will be undertaken on each policy area and therefore the policy approaches may be subject to change. These statements have been prepared to assist the responsible committee during the scrutiny of the Historic Environment (Wales) Bill.
- 1.2 The Welsh Government considers that these subordinate legislative powers are essential in order to prescribe matters of procedural detail and provide flexibility for matters that may require adjustment to facilitate effective implementation and operation.
- 1.3 The Assembly procedure proposed for each subordinate legislative power is set out in detail in chapter 5 of the Explanatory Memorandum. The guidelines published by the Counsel General in January 2012 have been followed to ensure a consistent approach to the Assembly procedures.
- 1.4 A draft of the statutory guidance on historic environment records that will be issued under section 35 of the Historic Environment (Wales) Bill has also been produced to assist the Committee during scrutiny. This has been shared informally with key partners such as the Welsh Local Government Association, the Welsh archaeological trusts and the Royal Commission on the Ancient and Historical Monuments of Wales. Formal consultation on the guidance will be undertaken in late 2015/early 2016, once the provisions of the Bill have been finalised.

2. Consultation on and review of, certain scheduling or listing decisions made by the Welsh Ministers

Powers

- 2.1. Part 2, section 3 of the Historic Environment (Wales) Bill introduces new sections 1AA(6), 1AD(2) and 1AE(6) in the Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act'). Schedule 1 of the Bill introduces paragraphs 1(1) and 5 in new schedule A2 of the 1979 Act.
- 2.2. Part 3, section 24 of the Historic Environment (Wales) Bill introduces new sections 2A(5), 2D(6) and 28B(2) in the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act'). Schedule 2 of the Bill introduces paragraphs 1(1) and 5 in new schedule 1B of the 1990 Act.

Description

- 2.3. Part 2, section 3 and Schedule 1 of the Historic Environment (Wales) Bill place a duty on the Welsh Ministers to consult with appropriate persons, including the owner and occupier, when proposing to add, remove or make a material amendment to an entry in the schedule of monuments. Section 1AA(6) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.4. The Bill also gives an owner or occupier the right, in certain circumstances, to request that the Welsh Ministers review a decision to schedule a monument or make a material amendment to an entry in the schedule of monuments. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
 - the grounds on which an application for a review may be made;
 - the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
 - the form and manner in which an application must be made;
 - the period within which an application must be made;
 - the procedure that is to be followed in connection with a review;
 - the conduct of public local inquiries and hearings;
 - the costs that may be required to be paid in connection with a review; and
 - the classes of review on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

- 2.5. Part 3, section 24 and Schedule 2 of the Bill introduce comparable measures for listed buildings. The Welsh Ministers must consult with the owner and other appropriate persons when proposing to add or remove an entry on the list of buildings of special architectural or historic interest. Section 2A(5) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.6. The provisions accord owners and occupiers the right, in certain circumstances, to request that the Welsh Ministers review a decision to list a building. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
- the grounds on which an application for a review may be made;
 - the form and manner in which an application must be made;
 - the information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application;
 - the period within which an application must be made; and
 - the classes of reviews on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

Policy intent

- 2.7. To introduce flexibility into the categories of people with whom the Welsh Ministers will consult prior to designating an asset, so that those people with an interest in the building or monument have an opportunity to feed into the formal consultation process.
- 2.8. To create a mechanism for review that is flexible and responsive to meet the needs of the public and the Welsh Ministers. Stipulating the administrative arrangements in regulations will provide an effective and efficient legislative mechanism for the Welsh Ministers to amend the procedures based on experience.
- 2.9. Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation and directions are summarised below.

Scheduled monuments	
Extend the categories of people that need to be consulted prior to designation.	
Part 2, section 3(1) which inserts new section 1AA(6) into the 1979 Act	
Detail	Policy intention
1AA(6) The Welsh Ministers may by regulations add to the list of appropriate persons in 1AA(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in the monument to be formally consulted prior to scheduling. If an additional category of person is identified, consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
Review of certain decisions to schedule a monument	
Part 2, section 3(1) which inserts new section 1AE(6)(a)–(g) into the 1979 Act	
Detail	Policy intention
1AE(6)(a) The grounds on which an application for a review may be made	<p>The grounds of review will be limited to matters concerning the criteria for scheduling.</p> <p>It should be possible to seek a review on the basis that:</p> <ul style="list-style-type: none"> • a factual error was made in the identification of the site as one of national importance; • the location or extent of the area was shown incorrectly on the map accompanying the scheduling entry; or • there is significant new evidence that was not previously considered relating to the national importance of the monument, for example, new information on the monument's date that makes a material difference to its national importance. <p>The intention is not to provide a right of review on the grounds that scheduling will restrict the use of the land or result in adverse consequences for the owner or occupier.</p>
1AE(6)(b) The information that must be provided to, or may be required by, the Welsh Ministers in connection with an application	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers' decision.
1AE(6)(c) The form and manner in which an application must be made	The applicant will be able to make an application for review online or in writing using the form provided by the Welsh Ministers.

1AE(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers' decision to schedule a monument. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
1AE(6)(e) The procedure that is to be followed in connection with a review	The Bill requires reviews to be undertaken by written representations, hearings or inquiries. The appointed person will be able to determine the procedure for deciding the appeal. It is anticipated that rules similar to those that govern planning application appeals will be used. It is expected that, outside of exceptional circumstances, the appointed person would make a site visit.
1AE(6)(f) The conduct of local public inquiries and hearings	Local public inquiries and hearings are likely to follow the procedures that govern planning permission hearings and inquiries. It is anticipated that the majority of reviews will be undertaken by written representations and that public inquiries will be unusual.
1AE(6)(g) Costs that may be required to be paid in connection with a review	There is no charge for requesting a review, but the applicant will have to pay their own costs. However, an application for an award of costs may be made by a party on the grounds that the other party's unreasonable behaviour has caused the person applying for costs unnecessary expense. Such a circumstance may arise, for instance, when a hearing is cancelled at a late stage on the withdrawal of an appeal.
Schedule 1 which inserts Schedule A2, paragraph 1(1) and paragraph 5 into the 1979 Act	
Detail	Policy intention
1(1) The classes of reviews on which a decision is to be made by an appointed person	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to schedule monuments. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by the Welsh Ministers	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.

Compensation for loss or damage caused by interim protection	
Part 2, section 3(1) which inserts new section 1AD(2) into the 1979 Act	
Detail	Policy intention
1AD(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

Listed buildings	
Extend the categories of people that need to be consulted prior to designation.	
Part 3, section 24(1) which inserts new section 2A(5) into the 1990 Act	
Detail	Policy intention
2A(5) The Welsh Ministers may by regulations add to the list of appropriate persons in 2A(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in a building and should be formally consulted prior to listing. If an additional category of person is identified then consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
Review of certain decisions to list a building	
Part 3, section 24(1) which inserts new section 2D(6)(a)–(d) into the 1990 Act	
Detail	Policy intention
2D(6)(a) The grounds on which an application for a review may be made	<p>The policy intention is that the review must relate to the special architectural or historic interest of a building and:</p> <ul style="list-style-type: none"> • the original decision was made wrongly — for instance, the wrong building was listed as a result of a factual error; • there was some irregularity in the process which affected the outcome — for example, relevant considerations were not taken into account or irrelevant considerations were taken into account; or

	<ul style="list-style-type: none"> there is significant new evidence that was not previously considered relating to the special architectural or historic interest of the building — for example, new information relating to the building’s date that makes a material difference to its architectural or historic interest. <p>It is not anticipated that other factors, such as the cost of upkeep or repair of listed buildings or planning considerations, should be taken into consideration.</p>
2D(6)(b) The form and manner in which an application must be made	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The applicant will be able to make an application for review online or in writing.
2D(6)(c) The information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application	The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers’ decision.
2D(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers’ decision to list a building. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
N.B. It is anticipated that the same review procedures will be established for decisions on scheduled monuments and listed buildings. The 1990 Act and the Town and Country Planning Act 1990 already allow the Welsh Ministers to make provisions on the conduct of local and public inquiries and the costs that may be required to be paid. Separate provisions are therefore not required to cover those matters in the context of reviews of the Welsh Ministers’ listing decisions.	
Schedule 2 which inserts Schedule 1B, paragraph 1(1) and paragraph 5 into the 1990 Act	
Detail	Policy intention
1(1) The classes of reviews on which a decision is to be made by an appointed person rather than the Welsh Ministers	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to list buildings. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is

the Welsh Ministers	undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.
Compensation for loss or damage caused by interim protection	
Part 3, section 24(3) which inserts new section 28B(2) into the 1990 Act	
Detail	Policy intention
28B(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

3. Scheduled monument consent — simplification of process

Power

- 3.1 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill introduces new section 5B and paragraph 1(3) to Part 1 of Schedule 1 in the 1979 Act.

Description

- 3.2 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill allows the Welsh Ministers to make regulations to set out the way in which they may grant scheduled monument consent and how an owner/occupier can apply for consent other than by using the prescribed form.

Policy intent

- 3.3 To create a consent process that is flexible and proportionate in order to meet the needs of the public and the Welsh Ministers.
- 3.4 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

Scheduled monument consent — simplification of process	
Part 2, section 5(1) which inserts new section 5B into the 1979 Act	
Detail	Policy intention
Form and content of scheduled monument consent	The 1979 Act requires scheduled monument consent to be granted in writing if works are to be authorised. The new section allows for the Welsh Ministers to grant scheduled monument consent in such other manner as they prescribe. The policy intent here is to allow the grant of consent electronically and to future-proof the system to keep pace with technological change.
Part 2, section 5(2) which inserts new paragraph 1(3) in Part 1 of Schedule 1 of the 1979 Act	
Detail	Policy intention
Application may be made otherwise than in the form provided for in paragraph 1(1) of Schedule 1	Schedule 1, Part 1 of the 1979 Act provides for regulations on the form and manner in which applications for scheduled monument consent can be made. The new paragraph would give the Welsh Ministers flexibility to permit certain applications for scheduled monument consent to be made in a form other than that provided for in paragraph 1(1). This would allow for the introduction of a simplified scheduled monument consent process that would dispense with a written application and the interim consent stage, which provides the applicant with the opportunity to make further representations or require a hearing. Where the applicant and the Welsh Ministers agree on the use of this process, a scheduled monument consent letter could be issued simply authorising the works to a monument as described. This procedure would only be used for minor works.

4. Compensation for refusal of scheduled monument consent.

Powers

4.1 Part 2, section 10(2) of the Historic Environment (Wales) Bill introduces new section 7(4A) in the 1979 Act.

Description

4.2 Section 7 of the 1979 Act makes provision for the payment of compensation in very limited circumstances when scheduled monument consent is refused or granted subject to onerous conditions. An owner or anyone with an interest in a monument who incurs a loss or damage because scheduled monument consent is refused (or is granted subject to conditions which make it impossible to use the monument in the case of c) below) may be entitled to compensation if the works proposed:

- a) are reasonably necessary to implement a planning permission granted before the monument was scheduled;
- b) do not constitute development or are permitted development under the provisions of a General Development Order; or
- c) are necessary for the monument to continue being used for the lawful purpose for which it had been previously used immediately before the date of the application for consent.

4.3 Section 7(4) states that compensation is not payable (under b) above) where refusal relates to works which would totally or partially destroy a monument except for the purposes of agriculture or forestry.

Policy intent

4.4 The regulation-making power allows the Welsh Ministers to look further at the compensation provisions within the Act and to determine whether there is merit in the current policy of differential treatment for the purposes of agriculture and forestry compared with other purposes, especially taking into account current environmental protection legislation and agri-environment schemes.

5. Heritage partnership agreements

Powers

- 5.1 Part 2, section 11(1) of the Historic Environment (Wales) Bill introduces new section 9ZB(3) in the 1979 Act.
- 5.2 Part 3, section 28(1) of the Historic Environment (Wales) Bill introduces new section 26M(3) in the 1990 Act.

Description

- 5.3 Owners of scheduled monuments and/or listed buildings will be able to enter heritage partnership agreements with the Welsh Ministers or local planning authorities. Such an agreement will grant consent for a programme of specified works during a fixed period, negating the need for separate consents for each set of works.
- 5.4 Part 2, section 11(1) of the Historic Environment (Wales) Bill inserts new sections 9ZA and 9ZB in the 1979 Act providing for heritage partnership agreements for scheduled monuments and for the Welsh Ministers to grant scheduled monument consent for works as part of an agreement. Section 9ZB(3) provides powers for the Welsh Ministers to make provision by regulations for:
- any consultation that must take place before a heritage partnership agreement is made or varied;
 - the publicity that must be given to a heritage partnership agreement before it is made or varied;
 - terms that must be included in a heritage partnership agreement;
 - enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
 - the provision that may be included in such an order; and
 - disapplying, or applying or reproducing with or without modifications, any provision of the Bill for the purposes of heritage partnership agreements.
- 5.5 Part 3, section 28(1) of the Historic Environment (Wales) Bill inserts new sections 26L and 26M in the 1990 Act putting equivalent measures in place for listed buildings, including the power for local planning authorities or the Welsh Ministers to grant listed building consent for works covered by the agreement. Section 26M(3) provides powers for the Welsh Ministers to make provision by regulations for:

- any consultation that must take place before a heritage partnership agreement is made or varied;
- the publicity that must be given to a heritage partnership agreement before it is made or varied;
- terms that must be included in a heritage partnership agreement;
- enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
- enabling any local planning authority who is party to an agreement to terminate;
- the provision that may be included in such a termination order;
- disapplying, or applying or reproducing with or without modifications, specified provisions in the 1990 Act relating to the listed building consent process for the purposes of heritage partnership agreements; and
- any consequential amendments that may be required to specified sections of the 1990 Act.

Policy intent

- 5.6 To improve the sustainable management of Wales' statutorily designated historic assets by creating powers for consenting authorities, owners and other interested parties to enter into long-term, voluntary management plans which can provide all the necessary statutory consents for an agreed programme of works. Stipulating the details of the administrative arrangements in regulations will allow for flexibility and for the procedures to be amended relatively quickly based on experience.
- 5.7 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

Heritage partnership agreements for scheduled monuments	
Part 2, section 11(1) which inserts new section 9ZB(3) into the 1979 Act	
Detail	Policy intention
9ZB(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple scheduled monument consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require the Welsh Ministers to consult with the relevant local planning authority, the appropriate archaeological trust and other bodies with pertinent expertise prior to agreeing to a heritage partnership agreement. The consultation and publicity process will last for a minimum of 28 days.
9ZB(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the Welsh Ministers to publish online information on a proposed heritage partnership and to make any owner or occupier not party to the agreement aware of it.
9ZB(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 9ZB(1), including that it must be in writing and provide for review, termination and variation. The regulations will supplement these by specifying any other terms that must be included in an agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
9ZB(3)(d) Enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement	The intention is that the Welsh Ministers will have the power to terminate a heritage partnership agreement where, as a last resort, this is considered necessary to protect the national importance of a scheduled monument and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.
9ZB(3)(e) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision	If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any scheduled monument consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.

9ZB(3)(f) Disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements	The regulations will set out the sections of the 1979 Act which will apply or disapply to heritage partnership agreements. Thus, the regulations may apply the provisions in the Act that deal with the control of works affecting scheduled monuments and unauthorised works, but may disapply the provisions in the Act that set out the duration of scheduled monument consent.
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Heritage partnership agreements for listed buildings	
Part 3, section 28(1) which inserts new section 26M(3) into the 1990 Act	
Detail	Policy intention
26M(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple listed building consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require local planning authorities to consult specified amenity bodies, such as the Georgian Society, the Victorian Society or the Twentieth Century Society, as well as the Welsh Ministers if they are not party to the agreement. These arrangements are similar to those that are currently in place for listed building consent applications. The consultation and publicity process will last for a minimum of 28 days.
26M(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the local planning authority to publish online the information on a proposed heritage partnership agreement and to make any owner or occupier not party to the agreement aware of it.
26M(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 26M(1), including that it must be in writing and provide for review, termination and variation of the agreement . The regulations will supplement these by specifying any other terms that must be included in the agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
26M(3)(d) and (e) Enabling the Welsh Ministers or local planning authority to terminate by order a heritage partnership agreement or any	The intention is that the Welsh Ministers and a local planning authority who is party to an agreement will have the power to terminate it where, as a last resort, this is considered necessary to protect the special interest of a listed building and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed

provision of such an agreement	circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.
26M(3)(f) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision	If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, a local planning authority or some other specified person, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any listed building consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.
26M(3)(g) Disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26 , 28 and 38 to 46 for the purposes of heritage partnership agreements	The regulations will set out sections of the 1990 Act which will apply or disapply to heritage partnership agreements; these sections relate to the application, notification, consent and appeal processes, and enforcement for listed building. For example, the regulations may apply the provisions in the Act that allow conditions to be placed within listed building consent decisions or those that allow applications for listed building consent to be referred to Welsh Ministers. As heritage partnership agreements are voluntary, the rights of applicants will not be undermined.
26M(3)(h) Providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph: <ul style="list-style-type: none"> i. sections 30 to 37; ii. sections 62 and 63; iii. Parts 3 and 4; iv. Schedule 3. 	The provision would allow the regulations to modify provisions of the 1990 Act that have the potential to be affected as a consequence of the substitution of the heritage partnership agreement for the listed building consent process. These could include provisions pertaining to compensation, listed building purchase notices and the classes of appeals to be determined by a person appointed by the Welsh Ministers.

6. Temporary stop notices

Power

- 6.1 Part 2, section 13(1) of the Historic Environment (Wales) Bill introduces new section 9ZL(1) in the 1979 Act.
- 6.2 Part 3, section 29(1) of the Historic Environment (Wales) Bill introduces new section 44B(11) and 44D(1) in the 1990 Act.

Description

- 6.3 Part 2, section 13(1) inserts new sections 9ZI–9ZL into the 1979 Act to govern new powers for Welsh Ministers to issue temporary stop notices requiring the immediate cessation of specified works to scheduled monuments for a period of 28 days. New section 9ZL sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the service of the temporary stop notice, while 9ZL(1) allows Welsh Ministers to prescribe the time and manner in which a compensation claim must be made.
- 6.4 Part 3, section 29(1) inserts comparable measures (new sections 44B–44D) for local planning authorities to issue temporary stop notices requiring the immediate cessation of specified works to listed buildings. New section 44B(11) allows the Welsh Ministers to make regulations prescribing works to which temporary stop notices shall not apply. New section 44D(1) allows the Welsh Ministers to prescribe the time and manner in which a compensation claim must be made in respect of any loss or damage directly attributed to the service of the temporary stop notice.

Policy intent

- 6.5 Temporary stop notices will give the Welsh Ministers and local planning authority effective measures to put an immediate halt to unauthorised works that are damaging designated historic assets.

Temporary stop notices — scheduled monuments	
Part 2, section 13(1) which inserts new section 9ZL(1) into the 1979 Act	
Detail	Policy intention
9ZL(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

Temporary stop notices — listed buildings	
Part 3, section 29(1) which inserts new sections 44B(11) and 44D(1) into the 1990 Act	
Detail	Policy intention
44B(11) The Welsh Minister may prescribe works to which temporary stop notices shall not apply.	The new power will enable the Welsh Ministers to exclude certain works from the direct or indirect application of temporary stop notices for listed buildings. The expectation is that temporary stop notices will be used infrequently against unauthorised works and it is not anticipated that classes of works will need to be exempted. However, if experience of the use of the notices warrants such an exemption, the regulation-making powers will provide a means to ensure that temporary stop notices function in an appropriate manner.
44D(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice.. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

7. Historic environment records

Powers

7.1 Part 4, section 33(9) of the Historic Environment (Wales) Bill confers powers to make regulations.

7.2 Part 4, section 36 of the Historic Environment (Wales) Bill confers powers to issue guidance.

Description

7.3 Part 4, sections 33 to 36 of the Historic Environment (Wales) Bill set out the requirement for the establishment of historic environment records in Wales. Section 33 places a duty on each local planning authority to create and maintain an up-to-date historic environment record for its particular area. Section 33(2) sets out the information that must be contained in a historic environment record, which includes:

- details of those historic assets that are statutorily protected or registered under the 1979 or 1990 Act;
- details of every conflict site which the authority considers to be of historic interest;
- details of every historic landscape in the authority's area;
- details of every world heritage site in the authority's area;
- details of every other area or site or other place in the authority's area which the authority considers to be of historic, archaeological or architectural interest;
- information about the way in which the historic, archaeological or architectural development of the authority's area or any part of it has contributed to the present character of the area or part and about how that character may be preserved, and
- details of relevant investigations carried out in the authority's area and of the findings of those investigations.

7.4 Section 33(9) enables the Welsh Ministers to amend, by regulations, the categories of information that must be contained in a historic environment record. The Bill requires the Welsh Ministers to consult local planning authorities and any other persons whom they consider appropriate before making the regulations.

7.5 Section 36 allows the Welsh Ministers to issue guidance on creating and maintaining historic environment records, the publication of historic environment records and the charging of fees in connection with their publication, and the making of

arrangements for the discharge of functions related to historic environment records. Prior to issuing the guidance, the Welsh Ministers must consult with the local planning authorities and any other persons whom they consider appropriate.

Policy intent

- 7.6 The regulation-making power provides flexibility for the Welsh Ministers to amend the definition of a historic environment record in the future should it be deemed necessary. The categories of information included in the Bill are based on the current content of the historic environment records. In the future, other categories of information on the historic environment may be deemed necessary to inform archaeological and other heritage advice and actions. For example, it may be deemed appropriate to require the inclusion of culturally significant sites or intangible heritage, or to amend the requirement to include 'every other site... in an authority's area' and replace with a more defined list. The effectiveness of the categories in the Bill will be reviewed as part of the monitoring of benchmarks and standards by the Royal Commission on the Ancient and Historical Monument of Wales on behalf of the Welsh Ministers.
- 7.7 The request to amend the categories of information contained in a historic environment record is likely to come from the historic environment sector. The Welsh Ministers will liaise closely with the Royal Commission on the Ancient and Historical Monuments of Wales, local planning authorities and other interested organisations, such as the Welsh archaeological trusts, in framing any new requirement. In addition, as required by the Bill, the Welsh Ministers will formally consult with local planning authorities and others prior to making the regulations.
- 7.8 A draft of the guidance to be issued under section 36 of the Bill accompanies this statement of policy intent. The draft has been shared with the Royal Commission on the Ancient and Historical Monuments of Wales, the Welsh Local Government Association and the Welsh archaeological trusts and will be consulted upon once the provisions of the Bill have been finalised.

8. Advisory Panel for the Welsh Historic Environment

Power

8.1 Part 4, section 38(7)(h) of the Historic Environment (Wales) Bill confers powers to make regulations.

Description

8.2 Part 4, section 37 of the Historic Environment (Wales) Bill requires the Welsh Ministers to establish the Advisory Panel for the Welsh Historic Environment. Section 38 makes provision about the constitution and membership of the panel. Subsection (7) sets out categories of people who are disqualified from membership of the panel, which include members of:

- the National Assembly for Wales,
- the House of Commons or the House of Lords,
- the European Parliament,
- a county council or county borough council, or
- a National Park authority.

8.3 In addition, subsection 7(h) will allow the Welsh Ministers to make regulations to disqualify staff from other organisations from panel membership.

Policy intent

8.4 The panel will need to demonstrate independence, integrity and impartiality. The panel will provide advice to the Welsh Ministers on a range of policy, strategy and funding issues. Many of the decisions taken by the Welsh Ministers on these issues may impact directly on a range of organisations be it in terms of the policies that they have to implement or the funding that they might (or might not) be awarded. The categories of persons under consideration for disqualification are:

- staff employed by the Welsh Government,
- staff employed by the Royal Commission on the Ancient and Historical Monuments of Wales, and
- staff employed by the four Welsh archaeological trusts.

- 8.5 It will not be possible to eliminate all conflicts of interest, since the pool of people with the required expertise, skills and knowledge is relatively small. Operating protocols will be used to deal with any potential conflicts of interest beyond those identified in the legislation and regulations.

Planning (Listed Buildings and Conservation Areas) Act 1990

AMENDMENTS TO BE MADE BY THE HISTORIC ENVIRONMENT (WALES) BILL

Purpose

This document is intended to show how the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, as they applied in relation to Wales on 7 January 2015, would look as amended by the Historic Environment (Wales) Bill (if enacted as introduced on 1 May 2015).

Material to be deleted by the Historic Environment (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Historic Environment (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

The Planning (Wales) Bill proposes some amendments to the provisions of this Act and, following the conventions outlined above, these have been included in green *like this*.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments. Text in square brackets [like this] indicates a difference between the law as it applies in relation to Wales and its application in relation to England, which will be expanded upon in the footnote.

Warning

This text has been prepared by officials of Cadw. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Historic Environment (Wales) Bill. It is not intended for use in any other context.

Listed Buildings

Chapter I

Listing of Special Buildings

1 Listing of buildings of special architectural or historic interest

- (1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act and the principal Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England (in this Act referred to as "the Commission") or by other persons or bodies of persons, and may amend any list so compiled or approved.
- (2) The Secretary of State shall not approve any list compiled by the Commission if the list contains any building situated outside England.
- (3) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also--
 - (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
 - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
- (4) Before compiling, approving (with or without modifications) or amending any list under this section in relation to buildings which are situated in England the Secretary of State shall consult--
 - (a) ~~in relation to buildings which are situated in England,~~ with the Commission; and
 - (b) with such other persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

S 26(1)(a)(i)

S 26(1)(a)(ii)

(4A) Section 2A makes provision about consultation on amendments of any list under this section to include or exclude a building which is situated in Wales.

S 26(1)(b)

- (5) In this Act "listed building" means a building which is for the time

being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act--

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall, subject to subsection (5A)(a), be treated as part of the building.

- (5A) In a list compiled or approved under this section, an entry for a building situated in England may provide--
 - (a) that an object or structure mentioned in subsection (5)(a) or (b) is not to be treated as part of the building for the purposes of this Act;
 - (b) that any part or feature of the building is not of special architectural or historic interest.
- (6) Schedule 1 shall have effect for the purpose of making provision as to the treatment as listed buildings of certain buildings formerly subject to building preservation orders.

2 Publication of lists

- (1) As soon as possible after any list has been compiled or approved under section 1 or any amendments of such a list have been made, a copy of so much of the list as relates to any district, Welsh county, county borough, or London borough or, as the case may be, of so much of the amendments as so relates, certified by or on behalf of the Secretary of State to be a true copy, shall be deposited--
 - (a) in the case of a London borough, with the council of borough and with the chief officer of the Commission; . . .
 - (b) in the case of a district--
 - (i) with the district council;
 - (ii) with the county planning authority whose area or any part of whose area includes the district, or any part of it; and
 - (iii) where the district council are not the district planning authority, with that authority and
 - (c) in the case of a Welsh county or county borough--
 - (i) with the county council or (as the case may be) the county borough council; and
 - (ii) with the local planning authority, if different from that council.

- (2) Any copy deposited under subsection (1) shall be a local land charge, and the council with whom a copy is deposited shall be treated for the purposes of the Local Land Charges Act 1975 as the originating authority as respects the charge constituted by the deposit.
 - (3) As soon as possible after the inclusion of any building situated in England in a list under section 1 (whether it is included when the list is compiled, approved or amended) or as soon as possible after any such list has been amended by the exclusion of ~~any building any such building~~ from it--
 - (a) the Secretary of State shall inform the council of the district, ~~Welsh county, county borough,~~ or London borough in whose area the building is situated of the inclusion or exclusion; and
 - (b) the council shall serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in or excluded from the list.
- S 26(2)(a)(i)
S 26(2)(a)(ii)
S 26(2)(b)
- (3A) As soon as possible after amending a list under section 1 to include or exclude a building which is situated in Wales, the Welsh Ministers—
- (a) must inform the local planning authority in whose area the building is situated of its inclusion or exclusion; and
 - (b) in the case of an amendment to exclude a building, must serve a notice on every owner and occupier of the building, stating that the building has been excluded from the list.
- (3B) Section 2D makes provision about the further steps that the Welsh Ministers must take after amending a list under section 1 to include a building which is situated in Wales.
- } S 26(3)
- (4) The Secretary of State shall keep available for public inspection free of charge at reasonable hours and at a convenient place, copies of all lists and amendments of lists, compiled, approved or made by him under section 1.
 - (5) Every authority with whom copies of any list or amendments are deposited under this section shall similarly keep available copies of so much of any such list or amendment as relates to buildings within their area.
 - (6) For the purposes of subsection (5) the Commission shall be taken to be an authority whose area is Greater London.

2A Duty to consult on certain changes to lists

- (1) This section applies where the Welsh Ministers are proposing to—
- } S 24(1)

- (a) include a building in a list compiled or approved under section 1; or
 - (b) exclude a building from such a list.
- (2) The Welsh Ministers must—
 - (a) serve a notice of the proposed inclusion or exclusion on the appropriate persons; and
 - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
 - (a) the owner and occupier of the building;
 - (b) the local planning authority in whose area the building is situated; and
 - (c) such other persons or bodies of persons as appear to the Welsh Ministers appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.
- (4) A notice under subsection (2) must—
 - (a) specify the proposed inclusion or exclusion;
 - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the date on which the notice is served; and
 - (c) in the case of a proposed inclusion—
 - (i) include a statement of the effect of section 2B; and
 - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

S 24(1)

2B Interim protection pending certain listing decisions

- (1) This section applies where the Welsh Ministers consult under section 2A on a proposal to include a building in a list compiled or approved under section 1.
- (2) The provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building, from the beginning of the day specified in the notice for the purposes of section 2A(4)(c)(ii), as if the building were a listed building
- (3) The protection conferred upon a building by virtue of subsection

- (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2) ceases to have effect—
- (a) where the Welsh Ministers include the building in a list compiled or approved under section 1, from the beginning of the day specified in the notice for the purposes of section 2D(2)(b); and
 - (b) where the Welsh Ministers decide not to include the building in such a list, from the beginning of the day specified in a notice issued to—
 - (i) the owner and occupier of the building; and
 - (ii) the local planning authority in whose area the building is situated.
- (5) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each building in relation to which interim protection has effect; and
 - (b) must, on request, provide a copy of the notice served under section 2A(2) in respect of such a building.

2C Provisions applicable on lapse of interim protection

Schedule 1A has effect as respects the lapse of interim protection.

2D Review of certain listing decisions

- (1) This section applies where the Welsh Ministers include a building in a list compiled or approved under section 1.
- (2) As soon as possible after amending the list to include the building, the Welsh Ministers must serve on the owner and occupier of the building a notice which—
- (a) states that the Welsh Ministers have included the building in the list;
 - (b) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 2B(2) ceased to have effect); and
 - (c) states that the owner or occupier may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where an owner or occupier of the building makes such an application, the Welsh Ministers must—

S 24(1)

- (a) carry out the review requested;
- (b) make a decision on the review; and
- (c) make such amendment to the list as they consider appropriate to give effect to that decision.
- (4) Except as provided in sections 62 and 63, the validity of a decision of the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
 - (a) by means of a local inquiry;
 - (b) by means of a hearing;
 - (c) on the basis of written representations.
- (6) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about—
 - (a) the grounds on which an application for a review may be made;
 - (b) the form and manner in which an application must be made;
 - (c) the information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application; and
 - (d) the period within which an application must be made.
- (7) Schedule 1B applies to reviews under this section.

S 24(1)

3 Temporary listing in England: building preservation notices S 25(2)

- (1) ~~If it appears to a local planning authority in Wales, or to a local planning authority in England who are not a county planning authority;~~ If it appears to a local planning authority in England who are not a county planning authority that a building in their area which is not a listed building-- S 25(1)

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

they may serve on the owner and occupier of the building a notice (in this Act referred to as a "building preservation notice").

- (2) A building preservation notice served by a local planning authority under this section shall-- S 26(4)(a)

- (a) state that the building appears to them to be of special

architectural or historic interest and that they have requested the Secretary of State to consider including it in a list compiled or approved under section 1; and

(b) explain the effect of subsections (3) to (5) and Schedule 2.

- (3) A building preservation notice under this section -- S 26(4)(b)
- (a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
- (b) subject to subsection (4), shall remain in force for six months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice under this section shall cease to be in force if the Secretary of State-- S 26(4)(c)
- (a) includes the building in a list compiled or approved under section 1, or
- (b) notifies the local planning authority in writing that he does not intend to do so.
- (5) While a building preservation notice under this section is in force with respect to a building, the provisions of this Act (other than section 59) and the principal Act shall have effect in relation to the building as if it were a listed building. S 26(4)(d)
- (6) If, following the service of a building preservation notice under this section, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 1, the authority shall immediately give notice of that decision to the owner and occupier of the building. S 26(4)(e)
- (7) Following such a notification by the Secretary of State no further building preservation notice in respect of the building shall be served by the local planning authority within the period of 12 months beginning with the date of the notification.
- (8) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

3A Temporary listing in Wales: building preservation notices

- (1) If it appears to a local planning authority in Wales that a building in their area which is not a listed building (and which is not treated as such by virtue of section 2B(2))—
- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,
- S 25(3)

- they may serve a notice on the owner and occupier of the building (in this Act referred to as a “building preservation notice”).
- (2) A building preservation notice under this section must—
- (a) state that the building appears to them to be of special architectural or historic interest and that they have requested the Welsh Ministers to consider including it in a list compiled or approved under section 1; and
 - (b) explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice under this section—
- (a) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
 - (b) subject to subsection (4), remains in force for six months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice under this section ceases to be in force—
- (a) if interim protection under section 2B(2) takes effect in relation to the building; or
 - (b) if the Welsh Ministers notify the local planning authority in writing that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or approved under section 1.
- (5) While a building preservation notice under this section is in force with respect to a building, the provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building as if it were a listed building.
- (6) If, following the service of a building preservation notice under this section, interim protection under section 2B(2) takes effect in relation to the building, anything done by virtue of subsection (5) is to be treated as having been done by virtue of section 2B(2).
- (7) If, following the service of a building preservation notice under this section, the Welsh Ministers notify the local planning authority that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or maintained under section 1, the authority must immediately give notice of that decision to the owner and occupier of the building.
- (8) Where such a notification is given by the Welsh Ministers, no further building preservation notice in respect of the building may be served by the local planning authority within the period of 12 months beginning with the date of the notification.

S 25(3)

4 Temporary listing in urgent cases

- (1) If it appears to the local planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.
- (2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 3, **3A**, this section, sections 5 and 10 to 26 and Schedule 2 as service of the notice. S 26(5)
- (3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.
- (4) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

5 Provisions applicable on lapse of building preservation notice

- (1) Schedule 2 to this Act shall have effect as respects the lapse of building preservation notices. S 26(6)(a)
- (2) See section 3A(6) for provision as respects the lapse of building preservation notices in consequence of interim protection taking effect. S 26(6)(b)

6 Issue of certificate that building not intended to be listed: England S 27(2)

- (A1) The Secretary of State may, on the application of any person, issue a certificate stating that the Secretary of State does not intend to list a building situated in England.
- ~~(1) Where--~~
 - ~~(a) application has been made for planning permission for any development involving the alteration, extension or demolition of a building situated in Wales; or~~
 - ~~(b) any such planning permission has been granted;~~
- ~~the Secretary of State may, on the application of any person, issue a certificate stating that he does not intend to list the building.~~
- (2) The issue of a certificate under subsection (A1) ~~or (1)~~ in respect of a building shall--
 - (a) preclude the Secretary of State for a period of 5 years from the date of issue from exercising in relation to that building

- any of the powers conferred on him by section 1; and
- (b) preclude the local planning authority for that period from serving a building preservation notice in relation to it.
- (3) Notice of an application under subsection (A1) ~~or (1)~~ shall be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Secretary of State. S 27(1)(c)
- (4) In this section "local planning authority", in relation to a building in Greater London, includes the Commission.

6A Issue of certificate that building not intended to be listed: Wales

- (1) The Welsh Ministers may, on the application of any person, issue a certificate stating that the Welsh Ministers do not intend to list a building situated in Wales.
- (2) The issue of a certificate under subsection (1) in respect of a building —
- (a) precludes the Welsh Ministers for a period of 5 years from the date of issue from exercising in relation to that building any of the powers conferred on them by section 1 or 2A; and
- (b) precludes the local planning authority for that period from serving a building preservation notice in relation to it.
- (3) Notice of an application under subsection (1) must be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Welsh Ministers.
- S 27(3)

Chapter II

Authorisation of Works Affecting Listed Buildings

Control of works in respect of listed buildings

7 Restriction on works affecting listed buildings

- (1) Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8.
- (2) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

8 Authorisation of works: listed building consent

- (1) Works for the alteration or extension of a listed building are authorised if--
 - (a) written consent for their execution has been granted by the local planning authority or the Secretary of State; and
 - (b) they are executed in accordance with the terms of the consent and of any conditions attached to it.
- (2) Works for the demolition of a listed building are authorised if--
 - (a) such consent has been granted for their execution;
 - (b) notice of the proposal to execute the works has been given to the Royal Commission [the Commission]¹;
 - (c) after such notice has been given either--
 - (i) for a period of at least one month following the grant of such consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the Royal Commission [the Commission] for the purpose of recording it; or
 - (ii) the Secretary of the Royal Commission [the Commission], or another officer of theirs with authority to act on their behalf for the purposes of this section, has stated in writing that they have completed their recording of the building or that they do not wish to record it; and
 - (d) the works are executed in accordance with the terms of the consent and of any conditions attached to it.
- (3) Where--
 - (a) works for the demolition of a listed building or for its alteration or extension are executed without such consent; and
 - (b) written consent is granted by the local planning authority or the Secretary of State for the retention of the works,the works are authorised from the grant of that consent.
- (4) In this section "the Royal Commission" means--
 - (a) in relation to England, the Royal Commission on the Historical Monuments of England; and
 - (b) in relation to Wales, the Royal Commission on Ancient and Historical Monuments in Wales.

¹ Amendments to S 8(2) pertaining to England have been made by the Authorisation of Works (Listed Buildings) (England) Order 2001 (SI 2001/24).

- (5) The Secretary of State may by order provide that subsection (2) shall have effect with the substitution for the references to the Royal Commission of references to such other body as may be so specified.
- (6) Such an order--
 - (a) shall apply in the case of works executed or to be executed on or after such date as may be specified in the order; and
 - (b) may apply in relation to either England or Wales, or both.
- (7) Consent under subsection (1), (2) or (3) is referred to in this Act as "listed building consent".

9 Offences

- (1) If a person contravenes section 7 he shall be guilty of an offence.
- (2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.
- (3) In proceedings for an offence under this section it shall be a defence to prove the following matters--
 - (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
 - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
 - (c) that the works carried out were limited to the minimum measures immediately necessary; and
 - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

(3A) In proceedings for an offence under this section in relation to a building on which interim protection is conferred (which is, as a result of section 2B(2), treated as a listed building)—

- (a) it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building; and
- (b) where the defence is raised by a person on whom a notice should have been served under section 2A(2), it is for the prosecution to prove that the notice was served on that person.

S 24(2)

- (4) A person who is guilty of an offence under this section shall be liable--
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (5) In determining the amount of any fine to be imposed on a person convicted . . . of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Appeals

20 Right to appeal against decision or failure to take decision

- (1) Where a local planning authority--
- (a) refuse an application for listed building consent or grant it subject to conditions;
 - (b) refuse an application for the variation or discharge of conditions subject to which such consent has been granted or grant it and add new conditions; or
 - (c) refuse an application for approval required by a condition imposed on the granting of listed building consent with respect to details of works or grant it subject to conditions,
- the applicant, if aggrieved by the decision, may appeal to the Secretary of State.
- (2) A person who has made such an application may also appeal to the Secretary of State if the local planning authority have neither [done none of the following]²--
- (a) given notice to the applicant of their decision on the application; nor
 - [(aa) given notice to the applicant that they have exercised their power under section 81A or 81B to decline to determine the application.]
 - (b) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), given notice to the applicant that the application has been referred to the Secretary of State in accordance with directions given under section 12,

within the relevant period from the date of the receipt of the

² Amendments to S 20(2) pertaining to England were made by the Planning and Compulsory Purchase Act 2004, S 43(4)(a).

application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

- (3) In this section "the relevant period" means--
 - (a) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), such period as may be prescribed; and
 - (b) in the case of such an application for approval as is mentioned in paragraph (c) of subsection (1), the period of eight weeks from the date of the receipt of the application.
- (4) For the purposes of the application in relation to England³ of sections 22(1) and 63(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.
- (5) For the purposes of the application in relation to Wales of sections 22(1), 63(7)(b) and 88E(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.⁴

20A Appeal made: functions of local planning authorities⁵

21 Appeals: supplementary provisions

- (1) An appeal under section 20 must be made by notice served in the prescribed manner within such period as may be prescribed.
- (2) The period which may be prescribed under subsection (1) must not be less than--
 - (a) in the case of an appeal under subsection (1) of section 20, 28 days from the receipt by the applicant of notification of the decision; or
 - (b) in the case of an appeal under subsection (2) of that section, 28 days from the end of the relevant period (within the meaning of that section) or, as the case may be, the extended period there mentioned.
- (3) The notice of appeal may include as the ground or one of the grounds of the appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1.
- (4) In the case of a building with respect to which interim protection S 26(7)

³ Words "in relation to England" inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014

⁴ Subsection (5) inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014.

⁵ This section will come into force in Wales in June 2015 (SI 2015/340).

has effect or a listed building preservation notice is in force, the notice may include a claim that the building should not be included in such a list.

S 26(7)

(4A) Once notice of an appeal under section 20 to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed.

(4B) Regulations which make provision under subsection (4A) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.⁶

(5) Regulations under this Act may provide that an appeal in respect of an application for listed building consent or for the variation or discharge of conditions subject to which such consent has been granted shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one of those described in subsection (1) of section 11.

(6) Any such regulations may also include provisions corresponding to those which may be included in the regulations which may be made by virtue of section 11.

(7) If any person--

(a) issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (5) or (6) and contains a statement which he knows to be false or misleading in a material particular; or

(b) recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Regulations under this Act may provide for an appeal under section 20 to be accompanied by such other information as may be prescribed.

(9) The power to make regulations under subsection (8) is exercisable by--

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

~~(10) Section 93(3) does not apply in relation to regulations under subsection (8) made by the Welsh Ministers.~~

~~(11) Regulations under subsection (8) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.]~~

} S 39(8)

⁶ To be inserted by the Planning (Wales) Bill, S 43(3).

[Buildings in England: heritage partnership agreements

26A Heritage partnership agreements

- (1) A relevant local planning authority may make an agreement under this section (a "heritage partnership agreement") with any owner of a listed building, or a part of such a building, situated in England.
- (2) Any of the following may also be a party to a heritage partnership agreement in addition to an owner and the relevant local planning authority--
 - (a) any other relevant local planning authority;
 - (b) the Secretary of State;
 - (c) the Commission;
 - (d) any person who has an interest in the listed building;
 - (e) any occupier of the listed building;
 - (f) any person involved in the management of the listed building;
 - (g) any other person who appears to the relevant local planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) A heritage partnership agreement may contain provision--
 - (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates, and
 - (b) specifying any conditions to which the consent is subject.
- (4) The conditions to which listed building consent may be subject under subsection (3)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (5) If a heritage partnership agreement contains provision under subsection (3), nothing in sections 10 to 26 and 28 applies in relation to listed building consent for the specified works, subject to any regulations under section 26B(2)(f).
- (6) A heritage partnership agreement may also--
 - (a) specify or describe works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest;
 - (b) make provision about the maintenance and preservation of the listed building;

- (c) make provision about the carrying out of specified work, or the doing of any specified thing, in relation to the listed building;
 - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
 - (e) restrict access to, or use of, the listed building;
 - (f) prohibit the doing of any specified thing in relation to the listed building;
 - (g) provide for a relevant public authority to make payments of specified amounts and on specified terms--
 - (i) for, or towards, the costs of any works provided for under the agreement; or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (7) For the purposes of subsection (6)(g), each of the following, if a party to the agreement, is a relevant public authority--
- (a) the Secretary of State;
 - (b) the Commission;
 - (c) a relevant local planning authority.
- (8) In this section "specified" means specified or described in the heritage partnership agreement.
- (9) In this section and section 26B--
- "owner", in relation to a listed building or a part of such a building, means a person who is for the time being--
- (a) the estate owner in respect of the fee simple in the building or part; or
 - (b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than seven years remain unexpired;
- "relevant local planning authority", in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

26B Heritage partnership agreements: supplemental

- (1) A heritage partnership agreement--
 - (a) must be in writing;
 - (b) must make provision for the parties to review its terms at

- intervals specified in the agreement;
 - (c) must make provision for its termination and variation;
 - (d) may relate to more than one listed building or part, provided that in each case a relevant local planning authority and an owner are parties to the agreement; and
 - (e) may contain incidental and consequential provisions.
- (2) The Secretary of State may by regulations make provision--
- (a) about any consultation that must take place before heritage partnership agreements are made or varied;
 - (b) about the publicity that must be given to heritage partnership agreements before or after they are made or varied;
 - (c) specifying terms that must be included in heritage partnership agreements;
 - (d) enabling the Secretary of State or any other person specified in the regulations to terminate by order a heritage partnership agreement or any provision of such an agreement;
 - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
 - (f) applying or reproducing, with or without modifications, any provision of sections 10 to 26 and 28 for the purposes of heritage partnership agreements;
 - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph--
 - (i) sections 30 to 37;
 - (ii) sections 62 and 63;
 - (iii) Parts 3 and 4;
 - (iv) Schedule 3.
- (3) Regulations made under subsection (2)(a) may, in particular, include provision as to--
- (a) the circumstances in which consultation must take place;
 - (b) the types of listed building in respect of which consultation must take place;
 - (c) who must carry out the consultation;
 - (d) who must be consulted (including provision enabling the Commission to direct who is to be consulted in particular

cases); and

- (e) how the consultation must be carried out.
- (4) Listed building consent granted by a heritage partnership agreement (except so far as the agreement or regulations under subsection (2) otherwise provide) enures for the benefit of the building and of all persons for the time being interested in it.
- (5) Subject to subsection (4), a heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not party to the agreement.
- (6) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenant) does not apply to a heritage partnership agreement.⁷

Buildings in Wales: heritage partnership agreements

26L Heritage partnership agreements

- (1) A relevant local planning authority may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (2) Any of the following may also be a party to an agreement made by a relevant local planning authority under this section (in addition to the owner and the authority)—
- (a) any other relevant local planning authority;
 - (b) the Welsh Ministers;
 - (c) any occupier of the listed building;
 - (d) any person who has an interest in the listed building;
 - (e) any person involved in the management of the listed building;
 - (f) any other person who appears to the relevant planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) The Welsh Ministers may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (4) Any of the following may also be a party to an agreement made by the Welsh Ministers under this section (in addition to the owner and the Welsh Ministers)—

S 28(1)

⁷ Sections 26A to 26K have been inserted by the Enterprise and Regulatory Reform Act 2013, S 60–61. Sections 26C to 26K treat listed building consent orders and certificates of lawfulness and apply only in England.

- (a) any relevant local planning authority;
 - (b) any occupier of the listed building;
 - (c) any person who has an interest in the listed building;
 - (d) any person involved in the management of the listed building;
 - (e) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (5) An agreement under this section is referred to in this section and in section 26M as a “heritage partnership agreement”.
- (6) A heritage partnership agreement may contain provision—
- (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates; and
 - (b) specifying any conditions to which the consent is subject.
- (7) The conditions to which listed building consent may be subject under subsection (6)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (8) A heritage partnership agreement may also—
- (a) specify or describe works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest;
 - (b) make provision about the maintenance and preservation of the listed building;
 - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the listed building;
 - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
 - (e) restrict access to, or use of, the listed building;
 - (f) prohibit the doing of any specified thing in relation to the listed building;
 - (g) provide for a relevant local planning authority or the Welsh Ministers to make payments of specified amounts and on specified terms—
 - (i) for, or towards, the costs of any works provided for under the agreement; or

S 28(1)

(ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.

(9) In this section “specified” means specified or described in the heritage partnership agreement.

(10) In this section and in section 26M—

“owner”, in relation to a listed building or part of such a building, means a person who is for the time being—

(a) the estate owner in respect of the fee simple in the building or part; or

(b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than 7 years remain unexpired;

“relevant local planning authority”, in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

26M Heritage partnership agreements: supplemental

(1) A heritage partnership agreement—

(a) must be in writing;

(b) must make provision for the parties to review its terms at intervals specified in the agreement;

(c) must make provision for its termination and variation; and

(d) may contain incidental and consequential provision.

(2) A heritage partnership agreement may relate to more than one listed building or part of such a building, provided that the following are parties to the agreement in each case—

(a) a relevant local planning authority or the Welsh Ministers; and

(b) an owner of the building or part.

(3) The Welsh Ministers may by regulations make provision—

(a) about any consultation that must take place before a heritage partnership agreement is made or varied;

(b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;

(c) specifying terms that must be included in a heritage partnership agreement;

(d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an

S 28(1)

- agreement;
- (e) enabling any local planning authority who is a party to a heritage partnership agreement to terminate the agreement, or any provision of the agreement, by order;
 - (f) about the provision that may be included in an order made under regulations under paragraph (d) or (e), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
 - (g) disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26, 28, and 38 to 46 for the purposes of heritage partnership agreements;
 - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (g), to apply with any modifications consequential on provision made under that paragraph—
 - (i) sections 30 to 37;
 - (ii) sections 62 and 63;
 - (iii) Parts 3 and 4;
 - (iv) Schedule 3.
- (4) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, listed building consent granted by such an agreement enures only for the benefit of the parties to the agreement).
- S 28(1)

Chapter III

Rights of Owners etc

Compensation

- 28 Compensation where listed building consent revoked or modified**
- (1) This section shall have effect where listed building consent is revoked or modified by an order under section 23 (other than an order which takes effect by virtue of section 25).
 - (2) If on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the building--
 - (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification; or
 - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the authority shall pay that person compensation in respect of that expenditure, loss or damage.

- (3) Subject to subsection (4), no compensation shall be paid under this section in respect of--
- (a) any works carried out before the grant of the listed building consent which is revoked or modified; or
 - (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.
- (4) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, shall be taken to be included in the expenditure incurred in carrying out those works.

[28A Compensation where consent formerly granted by order is granted conditionally or refused]⁸

28B Compensation for loss or damage caused by interim protection

- (1) This section applies where interim protection in respect of a building ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 2B(4)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the building is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the interim protection having effect.
- (4) Subsection (5) applies where—
 - (a) a building preservation notice was in force in respect of the building before interim protection took effect; and
 - (b) the notice ceased to be in force by virtue of section 3A(4)(a).
- (5) In such a case—

S 24(3)

S 25(4)

⁸ Inserted by the Enterprise and Regulatory Reform Act 2013, S 60 and apply only to England.

- (a) the reference in subsection (2) to the time when the interim protection took effect is to be treated as a reference to the time when the building preservation notice came into force;
- (b) the reference in that subsection to loss or damage directly attributable to the effect of the interim protection is to be treated as including a reference to loss or damage directly attributable to the effect of the building preservation notice being in force; and
- (c) the reference in subsection (3) to the necessity of discontinuing or countermanding works on account of the interim protection having effect is to be treated as including a reference to the necessity of discontinuing or countermanding works on account of the building preservation notice being in force.

S 25(4)

29 Compensation for loss or damage caused by service of building preservation notice

- (1) This section applies where a building preservation notice in respect of a building situated in England ceases to have effect without the building having been included in a list compiled or approved by the Secretary of State under section 1.

S 25(5)(a)

(1A) This section also applies where a building preservation notice in respect of a building situated in Wales ceases to have effect by virtue of section 3A(3)(b) or (4)(b).

S 25(5)(b)

- (2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the local planning authority in respect of any loss or damage directly attributable to the effect of the notice.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

30 Local planning authorities for compensation purposes

- (1) Subject to subsection (2)--
 - (a) . . .
 - (b) claims under section 28 shall be made to and paid by the local planning authority who made the order in question or, where it was made by the Secretary of State under section 26, the local planning authority who are treated as having

made it under that section;

- (c) claims under section 29 shall be made to and paid by the local planning authority who served the building preservation notice,

and references in those sections to a local planning authority shall be construed accordingly.

- (2) The Secretary of State may after consultation with all the authorities concerned direct that where a local planning authority is liable to pay compensation under section . . . 28 or 29 in any particular case or class of case they shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he may direct from one or more authorities specified in the direction.
- (3) This section does not apply in Greater London.

31 General provisions as to compensation for depreciation under this Part

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) This section applies to any compensation which is payable under sections 28, ~~28B and 29~~, 29 and 44D in respect of depreciation of the value of an interest in land.

*S 26(8) and
S 29(2)*

- (3) Where an interest in land is subject to a mortgage--
 - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

- (4) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under sections 28 and 29 shall be referred to and determined by the Upper Tribunal.
- (5) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this section.

Chapter IV

Enforcement

38 Power to issue listed building enforcement notice

- (1) Where it appears to the local planning authority--
 - (a) that any works have been or are being executed to a listed building in their area; and
 - (b) that the works are such as to involve a contravention of section 9(1) or (2),they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a "listed building enforcement notice").
- (2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken . . . --
 - (a) for restoring the building to its former state; or
 - (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
 - (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
- (3) A listed building enforcement notice--
 - (a) shall specify the date on which it is to take effect and, subject to sections 39(3) and 65(3A), shall take effect on that date, and
 - (b) shall specify the period within which any steps are required

to be taken and may specify different periods for different steps,

and, where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.

- (4) A copy of a listed building enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in it as the date on which it is to take effect --
 - (a) on the owner and on the occupier of the building to which it relates; and
 - (b) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.
- (5) The local planning authority may--
 - (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
 - (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3),

and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

- (6) The local planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (7) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

39 Appeal against listed building enforcement notice

- (1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice on any of the following grounds--
 - (a) that the building is not of special architectural or historic interest;
 - (b) that the matters alleged to constitute a contravention of

section 9(1) or (2) have not occurred;

- (c) that those matters (if they occurred) do not constitute such a contravention ;
 - (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
 - (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
 - (f) that copies of the notice were not served as required by section 38(4);
 - (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
 - (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
 - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
 - (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) An appeal under this section shall be made . . .--
- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
 - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
 - (c) by sending such notice to him using electronic

communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date .

- (3) Where such an appeal is brought the listed building enforcement notice shall subject to any order under section 65(3A) be of no effect pending the final determination or the withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing--
 - (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
 - (b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (7) In this section "relevant occupier" means a person who--
 - (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence . . . ; and
 - (b) continues so to occupy the building when the appeal is brought.

40 Appeals: supplementary provisions

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may--
 - (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (b) specify the matters to be included in such a statement;
 - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in

the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the building in question is situated;

- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- [(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.]⁹
- (2B) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in Wales.¹⁰
- (3) Schedule 3 applies to appeals under section 39.

41 Determination of appeals under s 39

- (1) On an appeal under section 39 the Secretary of State may--
 - (a) correct any defect, error or misdescription in the listed building enforcement notice; or
 - (b) vary the terms of the listed building enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- (2) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.
- (3) The Secretary of State--
 - (a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and
 - (b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a), (b) or (d).

⁹ Inserted by the Planning Act 2008, Schedule 10, paragraph 19 and yet to be commenced.

¹⁰ Inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014.

- (4) If [section 40(2) would otherwise apply and]¹¹ the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section] or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).
- (5) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (6) On the determination of an appeal the Secretary of State may--
 - (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
 - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
 - (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.
- (8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings in England¹² before the Secretary of State on an appeal under section 39 as if those proceedings were an inquiry held by the Secretary of State under section 250.

42 Execution of works required by listed building enforcement notice

- (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may--
 - (a) enter the land and take those steps, and
 - (b) recover from the person who is then the owner of the land

¹¹ The passages in square brackets in S 41(4) have been introduced in Wales by the Town and Country Planning (Determination of Procedure) (Wales) Order 2014. The same changes have been made for England by the Planning Act 2008, Schedule 10, paragraph 20, but not yet commended.

¹² To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 20.

any expenses reasonably incurred by them in doing so.

- (2) Where a listed building enforcement notice has been served in respect of a building--
- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
 - (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,

shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

- (3) Regulations under this Act may provide that all or any of the following sections of the Public Health Act 1936, namely--
- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
 - (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
 - (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

- (4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.
- (5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).
- (6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) . . .

43 Offence where listed building enforcement notice not complied with

- (1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show--
 - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
 - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable--
 - (a) on summary conviction, to a fine not exceeding £20,000; and
 - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

44 Effect of listed building consent on listed building enforcement notice

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)--
 - (a) for the retention of any work to which the notice relates; or
 - (b) permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any

person for an offence in respect of a previous failure to comply with that notice.

44A Injunctions

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.
- (5) In this section "the court" means the High Court or the county court.

44B Temporary stop notices

- (1) This section applies where it appears to a local planning authority in Wales that—
 - (a) works have been or are being executed to a listed building in their area; and
 - (b) the works are such as to involve a contravention of section 9(1) or (2).
- (2) The authority may issue a temporary stop notice if, having regard to the effect of the works on the character of the building as one of special architectural or historic interest, they consider it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
 - (a) specify the works in question;
 - (b) prohibit execution of the works (or so much of them as is specified in the notice);
 - (c) set out the authority's reasons for issuing the notice; and
 - (d) include a statement of the effect of section 44C.
- (4) A temporary stop notice may be served on a person who appears to the authority—
 - (a) to be executing the works or causing them to be executed;

S 29(1)

or

(b) to have an interest in the building.

(5) The authority must display a copy of the notice on the building.

(6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).

(7) A temporary notice ceases to have effect—

(a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or

(b) if the notice specifies a shorter period beginning with that day, at the end of that period.

(8) But if the authority withdraws the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.

(9) A local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1)(b).

(10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 44A.

(11) A temporary stop notice does not prohibit the execution of works of such description, or the execution of works in such circumstances, as the Welsh Ministers may by regulations prescribe.

S 29(1)

44C Temporary stop notices: offence

(1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—

(a) which has been served on the person; or

(b) a copy of which has been displayed in accordance with section 44B(5).

(2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.

(3) In proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, of

- the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is also a defence for the person to show—
- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
 - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
 - (c) that the works carried out were limited to the minimum measures immediately necessary; and
 - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted 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.

44D Temporary stop notices: compensation

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 44B(5), has an interest in the building is, on making a claim to the local planning authority within the prescribed time and in the prescribed manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (2) But subsection (1) applies only if—
- (a) the works specified in the notice are not such as to involve a contravention of section 9(1) or (2); or
 - (b) the authority withdraws the notice other than following the grant of listed building consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under a relevant provision, and

S 29(1)

- (b) the loss or damage could have been avoided if the claimant had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
 - (5) In subsection (4)(a), each of the following is a relevant provision—
 - (a) section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57);
 - (b) section 330 of the principal Act.
- } S 29(1)

45 Commission to have concurrent enforcement functions in London

The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under sections 38 to 43; and references to the local planning authority in those provisions shall be construed accordingly.

46 Enforcement by the Secretary of State

- (1) If it appears to the Secretary of State to be expedient that a listed building enforcement notice should be issued in respect of any land, he may issue such a notice.
- (2) Before the Secretary of State serves a notice under subsection (1) he shall consult--
 - (a) the local planning authority; and
 - (b) if the land is situated in England, the Commission.
- (3) A listed building enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.
- (4) In relation to a listed building enforcement notice issued by the Secretary of State, section 42 shall apply as if for any reference in that section to the local planning authority there were substituted a reference to the Secretary of State.
- (5) References in this section to the local planning authority shall in the case of an authority for an area in England outside Greater London be construed as references to the district planning authority.

Chapter V
Prevention of Deterioration and Damage
Compulsory acquisition of listed building in need of repair
Urgent preservation

- 54 Urgent works to preserve ~~unoccupied~~ listed buildings** S 30(5)
- (1) A local authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.
- (2) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a listed building--
- (a) if the building is in England, he shall authorise the Commission to execute any works specified in the authorisation which appear to him to be urgently necessary for its preservation; or
- (b) if the building is in Wales, he may himself execute any works which appear to him to be urgently necessary for its preservation.
- (3) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the building.
- (4) If, in the case of a building in England, the building is occupied works may be carried out only to those parts which are not in use. S 30(1)
- (4A) If, in the case of a building in Wales, the whole or part of the building is in residential use, works may be carried out only where they would not interfere unreasonably with that use. S 30(2)
- (5) The owner of the building must be given not less than seven days notice in writing of the intention to carry out the works and, in the case of works authorised under subsection (2)(a), the Commission shall give that notice.
- (5A) Where the works are to be executed to a building in Wales the whole or part of which is in residential use, the occupier of the building must also be given not less than seven days' notice in writing of the intention to carry out the works. S 30(3)
- (6) A notice under subsection (5) or (5A) shall describe the works proposed to be carried out. S 30(4)
- (7) As respects buildings in Greater London, the functions of a local authority under this section are exercisable concurrently by the Commission and the relevant London borough council.

55 Recovery of expenses of works under s 54

- (1) This section has effect for enabling the expenses of works executed under section 54 to be recovered by the authority who carried out the works, that is to say the local authority, the Commission or the Secretary of State or, in the case of works carried out by the Commission on behalf of the Secretary of State, the Secretary of State.
- (2) That authority may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building--
 - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
 - b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State--
 - (a) that some or all of the works were unnecessary for the preservation of the building; or
 - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or
 - (c) that the amount specified in the notice is unreasonable; or
 - (d) that the recovery of that amount would cause him hardship,and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable--
 - (a) to the owner of the building; and
 - (b) if the authority who gave notice under subsection (2) is a local authority or the Commission, to them.

(5A) Where the Welsh Ministers make a determination under subsection (4), the owner of the building or (if it is given notice under subsection (5)) the local authority may, within 28 days of the service of the notice under subsection (5), appeal to the county court against the decision.

(5B) In the case of a building in Wales, as from the time when the notice under subsection (2) becomes operative, the expenses which an authority may recover under this section carry interest at such rate as the authority may fix until recovery of all sums due

} S 30(6)

under this section; and the expenses and any interest are recoverable by the authority as a debt.

(5C) As from that time, the expenses and any interest are, until recovery, a charge on the land on which the building stands.

(5D) The charge takes effect at that time as a legal charge which is a local land charge.

(5E) For the purpose of enforcing the charge, the authority have the same powers and remedies under the Law of Property Act 1925 and otherwise as if they were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(5F) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(5G) For the purposes of subsections (5B) to (5F), the notice becomes operative—

S 30(6)

(a) where no representations are made under subsection (4) within the period referred to in that subsection, at the end of that period;

(b) where representations are made as mentioned in paragraph (a) but no appeal against the determination under subsection (4) is made under subsection (5A) within the period referred to in that subsection, at the end of that period;

(c) where an appeal is made as mentioned in paragraph (b) and the decision on the appeal confirms the determination under subsection (4) (with or without variation), at the time of the decision;

(d) where an appeal is made as mentioned in paragraph (b) but is withdrawn, at the time of the withdrawal.

Validity of instruments, decisions and proceedings

62 Validity of certain orders and decisions

- (1) Except as provided by section 63, the validity of--
- (a) any order under section 23 or 26 (whether before or after it has been confirmed); or
 - (b) any such decision by the Secretary of State as is mentioned in subsection (2),

shall not be questioned in any legal proceedings whatsoever.

- (2) Those decisions are--

(za) any decision on a review under section 2D;

S 26(9)

- (a) any decision on an application referred to the Secretary of State under section 12 or on an appeal under section 20;
 - (aa) any decision to approve or reject a local listed building consent order or part of such an order;
 - (ab) any decision on an appeal under section 26K;
 - (b) any decision to confirm or not to confirm a listed building purchase notice including--
 - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, and
 - (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part;
 - (c) any decision to grant listed building consent under paragraph (a) of section 41(6) or to discharge a condition or limitation under paragraph (b) of that section;
 - (d) any decision on an application for listed building consent under section 82B .
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is mentioned in subsection (2).

63 Proceedings for questioning validity of other orders, decisions and directions

- (1) If any person is aggrieved by any such order or decision as is mentioned in section 62(1) and wishes to question its validity on the grounds--
 - (a) that it is not within the powers of this Act, or
 - (b) that any of the relevant requirements have not been complied with in relation to it,
 he may make an application to the High Court under this section.
- (2) Without prejudice to subsection (1), if the authority directly concerned with any such order or decision wish to question its validity on any of those grounds, the authority may make an application to the High Court under this section.
- (3) An application under this section must be made within six weeks from the date on which the order is confirmed (or, in the case of an order under section 23 which takes effect under section 25 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.
- (4) On any application under this section the High Court--

- (a) may by interim order suspend the operation of the order or decision, the validity of which is questioned by the application, until the final determination of the proceedings; and
- (b) if satisfied--
 - (i) that the order or decision is not within the powers of this Act, or
 - (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it,
 may quash that order or decision.
- (5) References in this section to the confirmation of an order include the confirmation of an order subject to modifications.
- (6) In this section "the relevant requirements", in relation to any order or decision, means any requirements of this Act or of the Tribunals and Inquiries Act 1992 or of any order, regulations or rules made under either of those Acts which are applicable to that order or decision.
- (7) For the purposes of subsection (2) the authority directly concerned with an order or decision is--
 - (a) in relation to any such decision as is mentioned in section 62(2)(b)--
 - (i) the council on whom the listed building purchase notice was served, and
 - (ii) in a case where the Secretary of State has modified the notice wholly or in part by substituting another local authority or statutory undertakers for that council, also that authority or those statutory undertakers; and
 - (b) otherwise, the authority who--
 - (i) made the order or decision to which the proceedings in question relate, or
 - (ii) referred the matter to the Secretary of State, or
 - (iii) if the order was made by him, are the authority named in it.

64 Validity of listed building enforcement notices

The validity of a listed building enforcement notice shall not, except by way of an appeal under section 39, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

65 Appeals to High Court relating to listed building enforcement notices

- (1) Where the Secretary of State gives a decision in proceedings on an appeal under section 39 against a listed building enforcement notice, the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.
- (2) At any stage of the proceedings on any such appeal, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.
- (3) A decision of the High Court on a case stated by virtue of subsection (2) shall be deemed to be a judgment of the court within the meaning of section 16 of the Senior Courts Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
- (3A) In proceedings brought by virtue of this section, the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the listed building enforcement notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.
- (4) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules--
 - (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
 - (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- (5) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

- (6) In this section "decision" includes a direction or order, and references to the giving of a decision shall be construed accordingly.
- (7) In the case of a listed building enforcement notice issued by the Commission subsection (1) shall apply as if the reference to the local planning authority were a reference to the Commission.

76 Urgent works to preserve ~~unoccupied~~ buildings in conservation areas

S 30(5)

- (1) If it appears to the Secretary of State that the preservation of a building in a conservation area is important for maintaining the character or appearance of that area, he may direct that section 54 shall apply to it as it applies to listed buildings.
- (2) The Secretary of State shall consult the Commission before giving a direction under subsection (1) in respect of a building in England.

Part III

General

Authorities exercising functions under Act

81 Authorities exercising functions under Act

In this Act "local planning authority" shall be construed in accordance with Part I of the principal Act and Schedule 4 to this Act (which makes further provision as to the exercise of functions under this Act).

[Power to decline to determine application

81A Power to decline to determine subsequent application

- (1) A local planning authority may decline to determine an application for a relevant consent if--
 - (a) one or more of the conditions in subsections (2) to (4) is satisfied, and
 - (b) the authority think there has been no significant change in any material considerations since the relevant event.
- (2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application referred to him under section 12.
- (3) The condition is that in that period the Secretary of State has dismissed an appeal--

- (a) against the refusal of a similar application, or
 - (b) under section 20(2) in respect of a similar application.
- (4) The condition is that--
- (a) in that period the local planning authority have refused more than one similar application, and
 - (b) there has been no appeal to the Secretary of State against any such refusal or, if there has been such an appeal, it has been withdrawn .
- (5) Relevant consent is--
- (a) listed building consent, or
 - (b) conservation area consent.
- (6) The relevant event is--
- (a) for the purposes of subsections (2) and (4) the refusal of the similar application;
 - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (7) An application for relevant consent is similar to another application if (and only if) the local planning authority think that the building and works to which the applications relate are the same or substantially the same.
- (8) For the purposes of an application for conservation area consent a reference to a provision of this Act is a reference to that provision as excepted or modified by regulations under section 74.]¹³

[81B Power to decline to determine overlapping application

- (1) A local planning authority may decline to determine an application for a relevant consent which is --
 - (a) made on the same day as a similar application, or
 - (b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.
- (2) The condition is that a similar application is under consideration by the local planning authority and the determination period for that application has not expired.
- (3) The condition is that a similar application is under consideration by the Secretary of State in pursuance of section 12 or on an appeal under section 20 and the Secretary of State has not

¹³ Inserted by the Planning and Compulsory Purchase Act 2004, S 43(3) and commenced in England only by SI 2005/2081.

issued his decision.

- (4) The condition is that a similar application--
- (a) has been granted by the local planning authority,
 - (b) has been refused by them, or
 - (c) has not been determined by them within the determination period,
- and the time within which an appeal could be made to the Secretary of State under section 20 has not expired.
- (4A) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.
- (5) Relevant consent is--
- (a) listed building consent, or
 - (b) conservation area consent.
- (6) An application for relevant consent is similar to another application if (and only if) the local planning authority think that the building and works to which the applications relate are the same or substantially the same.
- (7) The determination period is--
- (a) the period prescribed for the determination of the application, or
 - (b) such longer period as the applicant and the authority have agreed for the determination of the application.
- (8) For the purposes of an application for conservation area consent a reference to a provision of this Act is a reference to that provision as excepted or modified by regulations under section 74.]¹⁴

Special cases

82 Application of Act to land and works of local planning authorities

- (1) In relation to land of a local planning authority, section 1(1), (2) and (4) and sections 2, and 39(6) shall have effect subject to such exceptions and modifications as may be prescribed.
- (2) The provisions mentioned in subsection (3) shall have effect for the purpose of applications by local planning authorities relating to the execution of works for the demolition, alteration or

¹⁴ Inserted by the Planning and Compulsory Purchase Act 2004 s43(3) and commenced in England only by SI 2009/384.

extension of listed buildings, subject to such exceptions and modifications as may be prescribed.

- (3) Those provisions are sections 1(3), (5) and (6), 3 to 5, 7 to 26, 28, 29, 32 to 50 (except section 39(6)), 60(1) to (4) (as it applies as respects the provisions mentioned in this subsection), 62 to 65, 67(2)(b), (6) and (7), 73(1), Schedules 1 and 2, paragraph 2 of Schedule 4 (as it applies to Schedule 1) and paragraph 4(1) of Schedule 4 (as it applies as respects the provisions mentioned in this subsection).
- (4) Regulations under this section may in particular provide--
 - (a) for the making of applications for listed building consent to the Secretary of State; and
 - (b) for the issue or service by him of notices under section 2(3) and the provisions mentioned in subsection (3).

82A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) These are the provisions--
 - (a) section 9;
 - (b) section 11(6);
 - (c) section 21(7);
 - (ca) section 26J;
 - (d) section 42(1), (5) and (6);
 - (e) section 43;
 - (f) section 44A;
 - (fa) section 44C;**
 - (g) section 54;
 - (h) section 55;
 - (i) section 59;
 - (j) section 88A.
- (3) But subsection (2)(a) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 9(3)(a) to (d) and the doing of that thing does not contravene section 7.

S 29(3)

82B Urgent works relating to Crown land: application

- (1) This section applies to any works proposed to be executed in

connection with any building which is on Crown land if the appropriate authority certifies--

- (a) that the works are of national importance, and
 - (b) that it is necessary that the works are carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for consent to the local planning authority in accordance with this Act, make an application for consent to the Secretary of State under this section.
- (3) If the appropriate authority proposes to make the application to the Secretary of State it must publish in one or more newspapers circulating in the locality of the building a notice--
 - (a) describing the proposed works, and
 - (b) stating that the authority proposes to make the application to the Secretary of State.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Secretary of State a statement of the authority's grounds for making the application.
- (5) If the appropriate authority makes an application under this section subsections (6) to (9) below apply.
- (6) The Secretary of State may require the authority to provide him with such further information as he thinks necessary to enable him to determine the application.
- (7) As soon as practicable after he is provided with any document or other matter in pursuance of subsection (4) or (6) the Secretary of State must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
- (8) The Secretary of State must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.
- (9) The Secretary of State must consult--
 - (a) the local planning authority for the area to which the proposed development relates, and
 - (b) such other persons as may be prescribed,about the application.
- (10) Subsection (7) does not apply to the extent that the document or other matter is subject to a direction under paragraph 6(6) of Schedule 3 (matters related to national security).
- (11) Subsections (4) and (5) of section 12 apply to an application

under this section as they apply to an application in respect of which a direction under section 12 has effect.

82C Expressions relating to the Crown

- (1) In this Act, expressions relating to the Crown must be construed in accordance with this section.
- (2) Crown land is land in which there is a Crown interest or a Duchy interest.
- (3) A Crown interest is any of the following--
 - (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;
 - (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - (c) such other interest as the Secretary of State specifies by order.
- (4) A Duchy interest is--
 - (a) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or
 - (b) an interest belonging to the Duchy of Cornwall.
- (5) A private interest is an interest which is neither a Crown interest nor a Duchy interest.
- (6) The appropriate authority in relation to any land is--
 - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
 - (b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land;
 - (c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;
 - (d) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
 - (e) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy, appoints;
 - (f) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a

government department, the department;

- (g) in relation to Westminster Hall and the Chapel of St Mary Undercroft, the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;
 - (h) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, the Lord Great Chamberlain.
- (7) If any question arises as to what authority is the appropriate authority in relation to any land it must be referred to the Treasury, whose decision is final.
 - (8) For the purposes of an application for listed building consent made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which it has no interest a reference to the appropriate authority must be construed as a reference to the person who makes the application.
 - (9) For the purposes of subsection (8) the Crown includes--
 - (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) a person who is an appropriate authority by virtue of subsection (6)(g) and (h).
 - (10) The reference to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862.
 - (11) An order made for the purposes of paragraph (c) of subsection (3) must be made by statutory instrument.
 - (12) But no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

82D Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes--

- (a) entering land;
 - (b) bringing proceedings;
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include--
- (a) service of a notice;
 - (b) the making of an order (other than by a court).

82E References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.

82F Applications for listed building or conservation area consent by Crown

- (1) This section applies to an application for listed building consent or conservation area consent made by or on behalf of the Crown.
- (2) The Secretary of State may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment.

Miscellaneous provisions

88 Rights of entry

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying any building on it or any other land in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.
- (2) Any person duly authorised in writing by the Secretary of State, a local planning authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes--
 - (a) surveying it or any other land in connection with any proposal by the authority or the Secretary of State to make,

issue or serve any order or notice under any of the provisions of sections 1 to 26, 38, 40, 46, 54, 55, 60, 68, 75 or 76 or under any order or regulations made under any of them, or any notice under section 48;

- (b) ascertaining whether any such order or notice has been complied with in relation to the land or any other land ;
 - (c) ascertaining whether an offence has been, or is being, committed with respect to any building on the land or any other land , under section 9, 11 , 26J or 43;
 - (d) ascertaining whether any building on the land or any other land is being maintained in a proper state of repair.
- (3) Any person duly authorised in writing by the Secretary of State, a local authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes--
- (a) ascertaining whether an offence has been or is being committed under section 59 in relation to the land or any other land ;
 - (b) ascertaining whether any of the functions conferred by section 54 should or may be exercised in connection with the land or any other land ; or
 - (c) exercising any of those functions in connection with the land or any other land.

(3A) Any person duly authorised in writing by a local planning authority in Wales may at any reasonable time enter any land for any of the following purposes—

- (a) securing the display or removal of a temporary stop notice (see section 44B);
- (b) ascertaining whether a temporary stop notice is being complied with;
- (c) considering any claim for compensation under section 44D.

S 29(4)

- (4) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable by the authority under section . . . 28, 28B or 29, 29 or 44D in respect of any land.
- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority having power to acquire land under sections 47 to 52 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect

S 26(10) and
S 29(5)

of any such acquisition.

- (6) Subject to section 88B(8) , any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil
- (7) . . .

88A Warrants to enter land

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing--
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 88; and
 - (b) that--
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
 - (ii) the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by the appropriate authority to enter the land.
- (2) In subsection (1) "the appropriate authority" means the person who may authorise entry on the land under section 88 for the purpose in question.
- (3) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (4) A warrant authorises entry on one occasion only and that entry must be--
 - (a) within one month from the date of the issue of the warrant; and
 - (b) at a reasonable hour, unless the case is one of urgency.

88B Rights of entry: supplementary provisions

- (1) A person authorised under section 88 to enter any land shall not demand admission as of right to any land which is occupied unless twenty-four hours notice of the intended entry has been given to the occupier.
- (2) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 88 or 88A (referred to in this section as "a right of entry")--
 - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;

- (b) may take with him such other persons as may be necessary;
and
 - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (5) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (6) A person who is guilty of an offence under subsection (4) shall be liable--
 - (a) on summary conviction to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (7) If any damage is caused to land or chattels in the exercise of--
 - (a) a right of entry; or
 - (b) a power conferred by virtue of section 88(6) in connection with such a right,compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 118 of the principal Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part IV of that Act.
- (8) No person shall carry out any works in exercise of a power conferred under section 88 unless notice of his intention to do so was included in the notice required by subsection (1).
- (9) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 88 if--
 - (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.

- (10) Section 265(1) and (3) of the principal Act (meaning of "appropriate Minister") applies for the purposes of subsection (9) as it applies for the purposes of section 325(9) of the principal Act.

88C Rights of entry: Crown land

- (1) Section 88 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of--
 - (a) a person appearing to the person seeking entry to the land to be entitled to give it, or
 - (b) the appropriate authority.
- (4) In subsection (6) the words "Subject to section 88B(8)" must be ignored.
- (5) Section 88B does not apply to anything done by virtue of this section.
- (6) "Appropriate authority" must be construed in accordance with section 82C(6).

[88D Determination of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate--
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any

- determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
 - (7) This section applies to--
 - (a) an application referred to the Secretary of State under section 12 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 20 against a decision of a local planning authority in England; and
 - (c) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.
 - (8) The Secretary of State may by order amend subsection (7) to--
 - (a) add proceedings under this Act to, or remove proceedings under this Act from the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
 - (9) An order under subsection (8) may--
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.]¹⁵

88E Determination of procedure for certain proceedings: Wales

- (1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a

¹⁵ Section 88D only applies in relation to applications and appeals in England.

- subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
 - (6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).
 - (7) This section applies to--
 - (a) an application referred to the Welsh Ministers under section 12;
 - (b) an appeal to the Welsh Ministers under section 20;
 - (c) an appeal to the Welsh Ministers under section 39.
 - (8) The Welsh Ministers may by order amend subsection (7) to—
 - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies; or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
 - (9) An order under subsection (8) may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
 - (10) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before and approved by resolution of the National Assembly for Wales.

89 Application of certain general provisions of principal Act

- (1) Subject to subsections (1A) and (2), the following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act, namely--
 - sections 319ZA to 319ZD (Wales: discharge of functions of local planning authority relating to applications),¹⁶
 - section 320 (local inquiries),
 - [section 322 (orders as to costs of parties where no inquiry held: England¹⁷)]
 - section 322A (order as to costs: supplementary)

¹⁶ To be inserted by the Planning (Wales) Bill, S 37(3).

¹⁷ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

section 322C (costs: Wales),¹⁸

323 (procedure on certain appeals and applications: England¹⁹),

section 323A (procedure for certain proceedings: Wales),²⁰

section 327A (compliance with requirements relating to applications),

section 329 (service of notices),

section 329A(1) and (2) (service of notices on the Crown)

section 330 (power to require information as to interests in land),

section 330A(1) to (4) (information as to interests in Crown land)

section 331 (offences by corporations).

[(1ZA) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 88D of this Act²¹.]

~~(1ZB) In the application of sections 322, 322A and 323 of that Act, references to section 319A of that Act shall have effect as references to section 88E of this Act.²²~~

(1A) In the case of a building situated in England, Subsection (1)(cc) of S 31 section 329 of that Act shall not apply to--

- (a) service of a building preservation notice;
 - (b) service of a copy of a listed building enforcement notice by a planning authority;
 - (c) giving of notice under section 38 of this Act of the exercise of powers conferred by subsection (5) of that section; or
 - (d) service of a listed building enforcement notice issued by the Secretary of State.
- (2) Section 331 of that Act shall not apply to offences under section 59 of this Act.
- (3) In the application of section 330 by virtue of this section, references to a local authority include the Commission.

¹⁸ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

¹⁹ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

²⁰ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

²¹ Inserted by the Planning Act 2008, S 196, Schedule 10, paragraph 22 but not yet in force

²² To be deleted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

Part IV
Supplemental

91 Interpretation

(1) In this Act, except in so far as the context otherwise requires--
"address", in relation to electronic communications, means any number or address used for the purpose of such communications;

"building preservation notice" has the meaning given in section 3(1) and 3A(1);

S 26(11)(a)

"the Commission" means the Historic Buildings and Monuments Commission for England;

"conservation area" means an area for the time being designated under section 69;

"conservation area consent" has the meaning given in section 74(1);

"electronic communication" has the same meaning as in the Electronic Communications Act 2000;

"interim protection" has the meaning given in section 2B(3);

S 26(11)(b)

"listed building" has the meaning given in section 1(5);

"listed building consent" has the meaning given in section 8(7);

"listed building enforcement notice" has the meaning given in section 38(1);

"listed building purchase notice" has the meaning given in section 32(1);

"local planning authority" shall be construed in accordance with section 81;

"prescribed", except in relation to matters expressly required or authorised by this Act to be prescribed in some other way, means prescribed by regulations under this Act;

"the principal Act" means the Town and Country Planning Act 1990;

"town scheme agreement" has the meaning given in section 79.

(2) Subject to subsections (6) and (7) and except in so far as the context otherwise requires, the following expressions have the same meaning as in the principal Act--

"the 1962 Act"

"acquiring authority"

"the Broads"

"building"

"compulsory acquisition"

"development"

"development order"

. . .

"disposal"

"enactment"

"functions"

"government department"

"joint planning board"

"land"

"lease"

"local authority"

"London borough"

"minerals"

"Minister"

. . .

"owner"

"the planning Acts"

"planning permission"

"public gas supplier"

"use"

"Valuation Office",

but this subsection does not affect the meaning of "owner" in section 11, [26L or 26M](#).

S 28(2)

- (3) In this Act "statutory undertakers" has the same meaning as in the principal Act except that--
- (a) in sections 33 to 36 it shall be deemed to include references to an electronic communications code operator and to a former PTO ;
 - (b) in sections 33 to 36, 51(2)(a) and 90(2) it shall be deemed to include a universal service provider in connection with the provision of a universal postal service , the Civil Aviation Authority, a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence), a public gas supplier, a holder of a licence under section 6 of the Electricity Act 1989, the Environment Agency, the

Natural Resources Body for Wales and every water or sewerage undertaker .

- (3A) The undertaking of a universal service provider so far as relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.
- (3B) In subsections (3) and (3A) "universal service provider" has the same meaning as in Part 3 of the Postal Services Act 2011 ; and the references to the provision of a universal postal service shall be construed in accordance with that Part .
- (4) References in the planning Acts to any of the provisions mentioned in section 82 include, except where the context otherwise requires, references to those provisions as modified under that section.
- (5) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served.
- (5A) Where--
- (a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act, and
 - (b) the communication is received by that person outside that person's business hours,
- it shall be taken to have been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.
- (6) In sections 33 to 36, 53(1), 54, 55 and 88(3) "local authority", in relation to a building or land in the Broads, includes the Broads Authority.
- (7) For the purposes of subsection (1)(b) of section 57 and subsection (2) of that section as it applies for the purposes of that subsection the definition of "building" in the principal Act shall apply with the omission of the words "but does not include any plant or machinery comprised in a building".

93 Regulations and orders

- (1) The Secretary of State may make regulations under this Act in relation to England and the Welsh Ministers may make regulations under this Act in relation to Wales--
- (a) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of

S 39(3)

this Act to be served, made or issued by any local authority or National Park authority;

- (b) for any purpose for which regulations are authorised or required to be made under this Act.
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations made under this Act, other than regulations under section 2A or 26M, shall be subject to annulment in pursuance of a resolution of either House of Parliament (in the case of regulations made by the Secretary of State) or the National Assembly for Wales (in the case of regulations made by the Welsh Ministers). S 39(4)(a)
S 39(4)(b)
- (3A) A statutory instrument containing regulations under section 2A or 26M may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. S 39(5)
- (4) The power to make orders under sections 8(5), 26C, 60, 75(7), 88D(8) and 92 shall be exercisable by statutory instrument.
- (5) Any statutory instrument which contains an order under section 60 or 75(7) shall be subject to annulment in pursuance of a resolution of either House of Parliament (in the case of an order made by the Secretary of State) or the National Assembly for Wales (in the case of an order made by the Welsh Ministers). S 39(6)
- (5A) No order may be made under section 26C or 88D(8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.
- (6) Any order under section 60 or 75(7) may contain such supplementary and incidental provisions as may appear to the Secretary of State or (as the case may be) the Welsh Ministers appropriate. S 39(7)
- (6A) Regulations and orders may make different provision for different purposes.
- (6B) The powers to make regulations under sections 10(3)(b), 67(1) and 73(1) must be taken to be powers mentioned in section 100(2) of the Local Government Act 2003 (powers exercisable in relation to descriptions of certain local authorities which fall into particular categories for the purposes of section 99 of that Act).
- (7) Without prejudice to section 14 of the Interpretation Act 1978, any power conferred by this Act to make an order shall include power to vary or revoke any such order by a subsequent order.

SCHEDULE 1A
introduced by section 2C
LAPSE OF INTERIM PROTECTION

- 1** This Schedule applies where interim protection ceases to have effect in relation to a building as a result of the issue of a notice under section 2B(5)(b).
- 2** The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 9, 43 or 44C committed with respect to the building while the interim protection had effect.
- 3** Any proceedings on or arising out of an application for listed building consent with respect to the building lapse; and any such consent granted while it had effect lapses.
- 4** (1) Any listed building enforcement notice served by the local planning authority with respect to the building ceases to have effect.
(2) Any proceedings on such a notice under sections 38 to 40 lapse.
(3) Notwithstanding sub-paragraph (1), section 42(1) and (2) continue to have effect as respects any expenses incurred by the local planning authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.
- 5** Any temporary stop notice served by the local planning authority with respect to the building ceases to have effect.

S 24(4) and
Schedule 2

SCHEDULE 1B
introduced by section 2D
DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH
MINISTERS

Decisions on reviews by appointed persons

- 1** (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 2D on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.
(2) Decisions on reviews of a prescribed class are to be made accordingly except in such classes of case as may for the time being be prescribed by the Welsh Ministers.
(3) This paragraph does not affect any provision in this Act or any

instrument made under it that an application for a review is to be made to the Welsh Ministers.

- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

Powers and duties of appointed person

2 (1) An appointed person has the same powers and duties in relation to a review under section 2D as the Welsh Ministers have—

(a) under subsections (3)(a) and (b) and (5) of that section; and

(b) by virtue of section 322C and 323A of the Town and Country Planning Act 1990 (c. 8) (costs and procedural matters: Wales), as applied to this Act by section 89 of this Act.

(2) Where an appointed person makes a decision on a review under section 2D, the decision is to be treated as that of the Welsh Ministers.

(3) Except as provided by sections 62 and 63, the validity of the decision is not to be questioned in any legal proceedings.

(4) No application may be made to the High Court under section 63 on the ground that the decision ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person’s power to make the decision before the decision is made.

(5) Where in any enactment (including this Act) there is a reference to the Welsh Ministers in a context relating or capable of relating—

(a) to a review under section 2D; or

(b) to anything done or authorised or required to be done by, to or before the Welsh Ministers in or in connection with any such review,

then, so far as the context permits and subject to sub-paragraph (6), the reference is to be construed, in relation to a review on which a decision has been made or is to be made by an appointed person, as a reference to that person.

(6) Sub-paragraph (5) does not permit references to the Welsh Ministers in section 2D(2)(c), (3)(c) or (6) to be construed as references to an appointed person.

(7) Sub-paragraph (1) does not affect the generality of sub-paragraph (5).

S 24(4) and
Schedule 2

Appointment of another person to make a decision on a review

- 3 (1) At any time before an appointed person has made a decision on a review under section 2D the Welsh Ministers may—
- (a) revoke the person's appointment; and
 - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

Local inquiries, hearings and written representations

- 4 (1) An appointed person may appoint an assessor to provide advice on—
- (a) any matters arising at a local inquiry or hearing held by the appointed person in connection with a review under section 2D or in consequence of such an inquiry or hearing; or
 - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (c. 70) (local inquiries: evidence) applies to an inquiry held by an appointed person.

S 24(4) and
Schedule 2

Directions

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 2D, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.
- 2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

Delegation

- 6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 2D, other than—
- (a) the conduct of a local inquiry or hearing; and

- (b) the making of a decision on the review under subsection (3)(b) of that section.
- (2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

Supplementary provision

- 7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review under section 2D and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 (c. 10) as functions of the Welsh Government.

S 24(4) and Schedule 2

SCHEDULE 2

Lapse of Building Preservation Notices

Section 5

- 1 This Schedule applies where a building preservation notice ceases to be in force by virtue of--
 - (a) the expiry of the six month period mentioned in subsection (3)(b) of section 3; ~~or~~ S 25(6)(a)
 - (b) the service of a notification by the Secretary of State under subsection (4)(b) of that section.
 - (c) the expiry of the six month period mentioned in subsection (3)(b) of section 3A; or
 - (d) the service of a notification by the Welsh Ministers under subsection (4A)(b) of that section. } S 25(6)(b)
- 2 The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 9 ~~or 43~~, 43 or 44C committed with respect to the building while it was in force. S 29(6)(a)
- 3 Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.
- 4 (1) Any listed building enforcement notice served by the local planning authority while the building preservation notice was in force shall cease to have effect.
- (2) Any proceedings on it under sections 38 to 40 shall lapse.

- (3) Notwithstanding sub-paragraph (1), section 42(1) and (2) shall continue to have effect as respects any expenses incurred by the local authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.
- (4) The reference to a local authority in sub-paragraph (3) above includes a reference to any National Park authority which is the local planning authority for any area.

5 Any temporary stop notice served by the local planning authority with respect to the building while the building preservation notice was in force ceases to have effect. S 29(6)(b)

SCHEDULE 3

Determination of Certain Appeals by Person Appointed by Secretary of State

Sections 22, 40

Determination of appeals by appointed person

- 1 (1) The Secretary of State may by regulations prescribe the classes of appeals under sections 20 , 26K and 39 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Appeals of a prescribed class shall be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State.
- (3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as "an appointed person".

Powers and duties of appointed person

- 2 (1) An appointed person shall have the same powers and duties--
 - (a) in relation to an appeal under section 20, as the Secretary of State has under subsection (1) of section 22 and paragraph 2 of Schedule 1;
 - (aa) in relation to an appeal under section 26K, as the Secretary of State has under section 26K(4) to (6); and

- (b) in relation to an appeal under section 39, as he has under section 41(1), (2) (2A) , (5) or (6) and paragraph 2 of Schedule 1.
- (2) Sections 22(2) and 40(2) shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the local planning authority whether they wish to appear before and be heard by the appointed person.
- (3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.
- (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
- (4A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies.
- (5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
- (6) Except as provided by sections 62 to 65, the validity of that decision shall not be questioned in any proceedings whatsoever.
- (7) It shall not be a ground of application to the High Court under section 63, or of appeal to the High Court under section 65, that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the local planning authority challenge the appointed person's power to determine the appeal before his decision on the appeal is given.
- (8) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating--
 - (a) to an appeal under section 20 , 26K or 39, or
 - (b) to anything done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal,
 then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.
- (9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 88D (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).

Determination of appeals by Secretary of State

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the local planning authority, any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4) and, if any person has been appointed under paragraph 1, on him.
- (3) Where in consequence of such a direction an appeal under section 20 , 26K or 39 falls to be determined by the Secretary of State himself, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) The Secretary of State shall give the appellant, the local planning authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if--
- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
 - (b) in the case of the appellant and the local planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so.
- (4A) Sub-paragraph (4) does not apply in the case of an appeal to which section 88D applies.
- (4B) In the case of an appeal to which section 88D applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.
- (5) Except as provided by sub-paragraph (4) or (4B) , the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.
- (6) In determining the appeal the Secretary of State may take into

account any report made to him by any person previously appointed to determine it.

- 4 (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
- (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4).
- (3) Where such a further direction has been given the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall unless that person directs otherwise, be treated as having been done by him.

Appointment of another person to determine appeal

- 5 (1) At any time before the appointed person has determined the appeal the Secretary of State may--
 - (a) revoke his appointment; and
 - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require--
 - (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
 - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person--
- (a) may hold a local inquiry in connection with the appeal; and
 - (b) shall do so if the Secretary of State so directs.
- (1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 88D applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.
- (2) Where an appointed person--
- (a) holds a hearing by virtue of paragraph 2(4) or this paragraph; or
 - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.
- (3) Subject to sub-paragraph (4), the costs of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) applies to an inquiry held by virtue of this paragraph **in England**²³ with the following adaptations--
- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held, there shall be substituted references to the Secretary of State; and
 - (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held, there shall be substituted a reference to the appointed person or the Secretary of State.
- (4A) Subsections (2) and (3) of that section apply to an inquiry held under this paragraph in Wales.**²⁴
- (5) Subject to sub-paragraph (6), at any **such inquiry** **inquiry held by virtue of this paragraph**²⁵ oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (6) If the Secretary of State is satisfied in the case of any such inquiry--
- (a) that giving evidence of a particular description or, as the

²³ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22.

²⁴ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22.

²⁵ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22

case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in sub-paragraph (7); and

- (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in that direction.

- (7) The matters referred to in sub-paragraph (6)(a) are--
 - (a) national security; and
 - (b) the measures taken or to be taken to ensure the security of any premises or property.
- (8) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to costs of the parties) in relation to proceedings in England²⁶ under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.

- 6A**
- (1) If the Secretary of State is considering giving a direction under paragraph 6(6) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
 - (2) If before the Secretary of State gives a direction under paragraph 6(6) no person is appointed under sub-paragraph (1), the Attorney General may at any time appoint a person as mentioned in sub-paragraph (1) for the purposes of the inquiry.
 - (3) The Lord Chancellor may by rules make provision--
 - (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph 6(6) in a case where a person has been appointed under sub-paragraph (1);
 - (b) as to the functions of a person appointed under sub-paragraph (1) or (2).
 - (4) If a person is appointed under sub-paragraph (1) or (2) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in paragraph 6(7) (the responsible person) to pay the fees and expenses of the appointed representative.
 - (5) If the appointed representative and the responsible person are

²⁶ To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22

unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.

- (6) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
- (7) An amount so certified is recoverable from the responsible person as a civil debt.
- (8) Rules made under sub-paragraph (3) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Sub-paragraph (10) applies if--
 - (a) a person is appointed under sub-paragraph (1) or (2), but
 - (b) no inquiry is held as mentioned in paragraph 6(1).
- (10) Sub-paragraphs (4) to (7) above apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
- (11) For the purposes of sub-paragraph (10) the responsible person is the person to whom the Secretary of State thinks he would have given a direction under sub-paragraph (4) if an inquiry had been held.
- (12) Sub-paragraphs (9) to (11) do not affect paragraph 6(8).

Supplementary provisions

- 7 (1) The Tribunals and Inquiries Act 1992 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) Where an appointed person is an officer of the Department for Communities and Local Government ~~or the Welsh Office~~ the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the Parliamentary Commissioner Act 1967--
 - (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; ~~and~~
 - ~~(b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.~~

S 32(1)(a)

} S 32(1)(b)

(3) Where an appointed person is a member of the staff of the Welsh Government, the functions of determining an appeal and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services Ombudsman (Wales) Act 2005 (c. 10) as functions of the Welsh Government.

S 32(3)

Local inquiries: Wales

- 8 (1) This paragraph applies in relation to a local inquiry held in pursuance of this Schedule if the matter in respect of which the inquiry is to be held relates to Wales.
- (2) The references in paragraph 6A(1) and (2) to the Attorney General must be read as references to the Counsel General to the Welsh Assembly Government .
- (3) The Assembly may by regulations make provision as mentioned in paragraph 6A(3) in connection with a local inquiry to which this section applies.
- (4) If the Assembly acts under sub-paragraph (3) rules made by the Lord Chancellor under paragraph 6A(3) do not have effect in relation to the inquiry.
- (5) . . .

~~(6) Section 93(3) does not apply to regulations made under this paragraph.~~

S 39(9)

Ancient Monuments and Archaeological Areas Act 1979

AMENDMENTS TO BE MADE BY THE HISTORIC ENVIRONMENT (WALES) BILL

Purpose

This document is intended to show how the provisions of the Ancient Monuments and Archaeological Areas Act 1979, as they applied in relation to Wales on 7 January 2015, would look as amended by the Historic Environment (Wales) Bill (if enacted as introduced on 1 May 2015).

Material to be deleted by the Historic Environment (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Historic Environment (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

Warning

This text has been prepared by officials of Cadw. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Historic Environment (Wales) Bill. It is not intended for use in any other context.

Ancient Monuments and Archaeological Areas Act 1979

*Amending
section of
the Historic
Environment
(Wales) Bill*

Part I

Ancient Monuments

Protection of scheduled monuments

1 Schedule of monuments

- (1) The Secretary of State shall compile and maintain for the purposes of this Act (in such form as he thinks fit) a schedule of monuments (referred to below in this Act as "the Schedule").
- (2) The Secretary of State shall on first compiling the Schedule include therein--
 - (a) any monument included in the list last published before the commencement of this Act under section 12 of the Ancient Monuments Consolidation and Amendment Act 1913; and
 - (b) any monument in respect of which the Secretary of State has before the commencement of this Act served notice on any person in accordance with section 6 (1) of the Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.
- (3) Subject to subsection (4) below, the Secretary of State may on first compiling the Schedule or at any time thereafter include therein any monument which appears to him to be of national importance.

The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as "the Commission") before he includes in the Schedule a monument situated in England.

- (4) The power of the Secretary of State under subsection (3) above to include any monument in the Schedule does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (5) The Secretary of State may--
 - (a) exclude any monument from the Schedule; or
 - (b) amend the entry in the Schedule relating to any monument (whether by excluding anything previously included as part of the monument or adding anything not previously so included, or otherwise).

In the case of a monument situated in England, the Secretary of

State shall consult with the Commission before he makes an exclusion or amendment.

(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.

S 4(1)

(6) As soon as may be after--

- (a) including any monument in the Schedule under subsection (3) above;
- (b) amending the entry in the Schedule relating to any monument; or
- (c) excluding any monument from the Schedule;

the Secretary of State shall (subject to sub-section (6A) below) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken and, in a case falling within paragraph (a) or (b) above, shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph (a), (b) or (c) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph (a) or (b) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

S 4(2)

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.

(7) Subject to subsection (7A) below the Secretary of State shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list

need not be published simultaneously.

- (7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.
- (8) The Secretary of State may from time to time publish amendments of any list published under subsection (7) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
 - (a) of the monuments listed; and
 - (b) of any matters purporting to be produced in the list from the entries in the Schedule relating to the monuments listed.
- (8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.
- (9) An entry in the Schedule recording the inclusion therein of a monument situated in England and Wales shall be a local land charge.
- (10) It shall be competent to record in the Register of Sasines--
 - (a) a certified copy of the entry or (as the case may be) the amended entry in the Schedule relating to any monument in Scotland which is heritable; and
 - (b) where any such monument is excluded from the Schedule and a certified copy of the entry in the Schedule relating to it has previously been so recorded under paragraph (a) above, a certificate issued by or on behalf of the Secretary of State stating that it has been so excluded.
- (11) In this Act "scheduled monument" means any monument which is for the time being included in the Schedule.

1A Commission's functions as to informing and publishing

- (1) As soon as may be after the Commission--
 - (a) have been informed as mentioned in section 1(6A) of this Act, and
 - (b) in a case falling within section 1(6)(a) or (b) of this Act, have

received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,

the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)(a) or (b), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

- (2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).
- (3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
 - (a) of the monuments listed; and
 - (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.

1AA Duty to consult on certain amendments relating to the Schedule

- (1) This section applies where the Welsh Ministers are proposing—
 - (a) to include a monument in the Schedule;
 - (b) to exclude a monument from the Schedule; or
 - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
 - (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
 - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
 - (a) the owner of the monument;
 - (b) if the owner is not the occupier, the occupier of the monument
 - (c) each local authority in whose area the monument is situated;
and

S 3(1)

(d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.

(4) A notice under subsection (2) must—

(a) specify the proposed inclusion, exclusion or amendment;

(b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and

(c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—

(i) include a statement of the effect of section 1AB; and

(ii) specify the date on which interim protection takes effect under subsection (2) of that section.

(5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—

(a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or

(b) reduces the area so shown.

(6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

S 3(1)

1AB Interim protection pending decisions on certain amendments relating to the Schedule

(1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—

(a) include a monument in the Schedule; or

(b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.

(2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—

(a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and

- (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
- (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
 - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
 - (i) the owner of the monument;
 - (ii) if the owner is not the occupier, the occupier of the monument; and
 - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
- (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
 - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
 - (i) the owner of the monument;
 - (ii) if the owner is not the occupier, the occupier of the monument; and
 - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect, and
 - (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

S 3(1)

1AC Provisions applicable on lapse of interim protection

Schedule A1 has effect with respect to the lapse of interim protection.

1AD Compensation for loss or damage caused by interim protection

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

S 3(1)

1AE Review of decisions on certain amendments relating to the Schedule

- (1) This section applies where the Welsh Ministers—
 - (a) include a monument in the Schedule; or
 - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
 - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
 - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
 - (a) carry out the review requested;

- (b) make a decision on the review; and
 - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
 - (a) by means of a public local inquiry;
 - (b) by means of a hearing;
 - (c) on the basis of written representations.
- (6) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about —
 - (a) the grounds on which an application for a review may be made;
 - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
 - (c) the form and manner in which an application must be made;
 - (d) the period within which an application must be made;
 - (e) the procedure that is to be followed in connection with a review;
 - (f) the conduct of public local inquiries and hearings; and
 - (g) costs that may be required to be paid in connection with a review.
- (7) Regulations made by virtue of subsection (6)(e), (f) or (g) may confer power on the Welsh Ministers—
 - (i) to determine matters of a description specified in the regulations; and
 - (ii) to give directions in relation to those matters.
- (8) Schedule A2 applies to reviews under this section.

S 3(1)

2 Control of works affecting scheduled monuments

- (1) If any person executes or causes or permits to be executed any

works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act or by development consent.

- (2) This section applies to any of the following works, that is to say--
 - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
 - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
 - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if--
 - (a) the Secretary of State has granted written consent (referred to below in this Act as "scheduled monument consent") for the execution of the works; and
 - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).

} S 6(1)

- (4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that
 - (a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
 - (b) the Secretary of State or a person authorised by the Secretary of State (in any other case)

be afforded an opportunity, before any works to which the consent

relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Secretary of State to be desirable for the purpose of archaeological investigation.

(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers. } S 5(1)

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument) — } S 3(2)

(a) it is a defence for the accused to prove that the accused 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 1AA(2), it is for the prosecution to prove that the notice was served on the person.

(7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.

(8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument it shall be a defence for the accused to prove that he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument. S 15(2)

(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in S 15(3)

relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused —

(a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and

(b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.

S 15(3)

- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment to a fine.
- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for and the effect of, scheduled monument consent.

3 Grant of scheduled monument consent by order of the Secretary of State

- (1) The Secretary of State may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified. Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.
- (2) Any conditions attached by virtue of section 2 of this Act to a scheduled monument consent granted by an order under this section shall apply in such class or description of cases as may be specified in the order.
- (3) The Secretary of State may direct that scheduled monument consent granted by an order under this section shall not apply to any scheduled monument specified in the direction, and may

withdraw any direction given under this subsection. Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.

- (4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.
- (5) References below in this Act to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this section unless the contrary intention is expressed.

4 Duration, modification and revocation of scheduled monument consent

- (1) Subject to subsection (2) below, if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this subsection in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this section).
- (2) Subsection (1) above does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.
- (3) If it appears to the Secretary of State to be expedient to do so, he may by a direction given under this section modify or revoke a scheduled monument consent to any extent he considers expedient. Where a direction would (if given) affect a monument situated in England, the Secretary of State shall consult with the Commission before he gives such a direction.
- (4) Without prejudice to the generality of the power conferred by subsection (3) above to modify a scheduled monument consent, it extends to specifying a period, or altering any period specified, for the purposes of subsection (1) above, and to including a provision to the effect mentioned in subsection (2) above, or altering any period specified for the purposes of any such provision.
- (5) Part II of Schedule 1 to this Act shall have effect with respect to directions under this section modifying or revoking a scheduled monument consent.

5 Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency

- (1) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument he may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of his intention to do so.
- (2) Where the Secretary of State executes works under this section for repairing any damage to a scheduled monument--
 - (a) any compensation order previously made in respect of that damage under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Secretary of State; and
 - (b) any such order subsequently made in respect of that damage shall be made in favour of the Secretary of State.
- (3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute such works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of "Commission" for "Secretary of State" (in each place) and of "execute" for "executes".

6 Powers of entry for inspection of scheduled monuments, etc

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition and
 - (a) whether any works affecting the monument are being carried out in contravention of section 2(1) of this Act; or

- (b) whether it has been or is likely to be damaged (by any such works or otherwise).
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with--
 - (a) any application for scheduled monument consent for works affecting that monument; or
 - (b) any proposal by the Secretary of State to modify or revoke a scheduled monument consent for any such works.
- (3) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of--
 - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
 - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works;

so as to ensure that the works in question are to have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

- (4) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land on which any works to which a scheduled consent relates are being carried out for the purpose of--
 - (a) inspecting the land (including any buildings or other structures on the land) with a view to recording any matters of archaeological or historical interest; and
 - (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.
- (5) Any person duly authorised in writing by the Secretary of State may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Secretary of State to be desirable with a view to preserving the monument from accidental or deliberate damage. This subsection does not apply to land in England.

- (6) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

6A Commission's powers of entry in relation to scheduled monuments

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of--
- (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
 - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,
- with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.
- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

7 **Compensation for refusal of scheduled monument consent**

- (1) Subject to the following provisions of this section, where a person who has an interest in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in subsection (2) below, the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this section and in section 8 of this Act to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this section--
- (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;
 - (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
 - (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purpose of paragraph (c) above, any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

- (3) The compensation payable under this section in respect of any works within subsection (2)(a) above shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the Secretary of State's decision, any development for which the planning permission in question was granted could not be carried out without contravening section 2(1) of this Act.
- (4) In the case of a monument situated in England, a person shall not S 10(1)

be entitled to compensation under this section by virtue of subsection (2)(b) above if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation).

(4A) In the case of a monument situated in Wales, a person is not entitled to compensation under this section by virtue of section (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for purposes specified by the Welsh Ministers by regulations.

S 10(2)

- (5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this section by virtue of subsection (2)(c) above unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.
- (6) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land--
 - (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
 - (b) in the case of a refusal of scheduled monument consent, the Secretary of State, on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (7) References in this section to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land.

8 Recovery of compensation under section 7 on subsequent grant of consent

- (1) Subject to the following provisions of this section, this section applies--
 - (a) in a case where compensation under section 7 of this Act was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State subsequently grants scheduled monument consent for the execution of all or any of

- the works in respect of which the compensation was paid; and
- (b) in a case where compensation under that section was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Secretary of State subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grant a new consent in respect of all or any of those works free from those conditions, or any of them.
- (2) This section does not apply in any case unless--
- (a) the compensation paid exceeded £20; and
 - (b) the requirement mentioned in subsection (2A) below is fulfilled.
- (2A) The requirement is that--
- (a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;
 - (b) where the monument in question is situated in Scotland, the Secretary of State has caused such notice to be deposited with the local authority of each area in which the monument is situated;
 - (c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each county or county borough in which the monument is situated.
- (3) In granting or modifying a scheduled monument consent in a case to which this section applies the Secretary of State may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Secretary of State or secured to his satisfaction or (as the case may be) has been repaid to the Commission or secured to their satisfaction.

Subject to subsection (4) below, in this subsection "the recoverable amount" means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Secretary of State thinks fit) as the Secretary of State may specify in giving notice of his decision on the application for scheduled monument consent or (as the case may be) in the

direction modifying the consent.

- (4) Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State as the recoverable amount for the purpose of subsection (3) above, he may require the determination of that amount to be referred to the Upper Tribunal or (in the case of a monument situated in Scotland) to the Lands Tribunal for Scotland; and in any such case the recoverable amount for the purposes of that subsection shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.
- (5) A notice deposited under subsection (2)(b) above shall specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation.
- (6) A notice so deposited in the case of a monument situated in England and Wales shall be a local land charge; and for the purposes of the Local Land Charges Act 1975 the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge thereby constituted.

9 Compensation where works affecting a scheduled monument cease to be authorised

- (1) Subject to the following provisions of this section, where any works affecting a scheduled monument which were previously authorised under this Part of this Act cease to be so, then, if any person who has an interest in the whole or any part of the monument--
 - (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
 - (b) has otherwise sustained loss or damage which is directly attributable to that fact;the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) Subsection (1) above only applies where the works cease to be authorised under this Part of this Act--
 - (a) by virtue of the fact that a scheduled monument consent granted by order under section 3 of this Act ceases to apply to any scheduled monument (whether by virtue of variation or

revocation of the order or by virtue of a direction under subsection (3) of that section); or

- (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under section 4 of this Act; or
 - (c) in accordance with paragraph 8 of Schedule 1 to this Act, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 5 of that Schedule.
- (3) A person shall not be entitled to compensation under this section in a case falling within subsection (2)(a) above unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.
- (4) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
- (5) Subject to subsection (4) above, no compensation shall be paid under this section in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

Agreements concerning scheduled monuments etc: Wales

9ZA Heritage partnership agreement

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
 - (a) a scheduled monument situated in Wales; or
 - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
 - (a) any occupier of the scheduled monument or its associated land;
 - (b) any person with an interest in the scheduled monument or its associated land;

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- (c) any person involved in the management of the scheduled monument or its associated land;
- (d) any local authority in whose area the scheduled monument or its associated land is situated;
- (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
- (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.

(3) A heritage partnership agreement may contain provision—

- (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
- (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(4) A heritage partnership agreement may also—

- (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
- (b) make provision about the maintenance and preservation of the monument or its associated land;
- (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
- (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
- (e) restrict access to, or use of, the scheduled monument or its associated land;
- (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
- (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on

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specified terms—

- (i) for, or towards, the cost of any works provided for under the agreement; or
- (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.

(5) In this section “specified” means specified or described in the heritage partnership agreement.

(6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—

- (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
- (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.

(7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

S 11(1)

9ZB Heritage partnership agreement: supplemental

(1) A heritage partnership agreement—

- (a) must be in writing;
- (b) must make provision for the parties to review its terms at intervals specified in the agreement;
- (c) must make provision for its termination and variation; and
- (d) may contain incidental and consequential provision.

(2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—

- (a) the Welsh Ministers; and
- (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.

(3) The Welsh Ministers may by regulations make provision—

- (a) about any consultation that must take place before a heritage partnership agreement is made or varied;

- (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
 - (c) specifying terms that must be included in a heritage partnership agreement;
 - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement;
 - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
 - (f) disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.
- (4) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).

S 11(1)

Scheduled monument enforcement notices

9ZC Scheduled monument enforcement notice

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
 - (a) the date on which the notice takes effect (see subsection (4));
 - (b) the alleged contravention;
 - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and

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- (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
- (a) steps for restoring the monument or land to its former state;
 - (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
 - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

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9ZD Scheduled monument enforcement notice: supplementary provision

- (1) A copy of a scheduled monument enforcement notice must be served on—
- (a) the owner of the monument or land concerned;
 - (b) if the owner is not the occupier, the occupier;
 - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
 - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.

- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
 - (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and
 - (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

9ZE Scheduled monument enforcement notice: appeal

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.
- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
 - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
 - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
 - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
 - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
 - (ii) the works carried out were limited to the minimum measures immediately necessary; and
 - (iii) written notice justifying in detail the need for the works

S 12(1)

was given to the Welsh Ministers as soon as reasonably practicable;

- (d) that a copy of the notice was not served as required by section 9ZD;
- (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

9ZF Scheduled monument enforcement notice: power of entry

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes —
 - (a) ascertaining whether a scheduled monument enforcement notice should be served;
 - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
 - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.
- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
 - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
 - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.
- (3) The liability under subsection (2)(b) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that

S 12(1)

entitlement.

- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

9ZG Failure to comply with scheduled monument enforcement notice

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
- (a) the works specified as being required to cease have not ceased; or
 - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
- (a) in a case concerning works required to cease, the works did cease; or
 - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

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(8) In determining the amount of a fine to be imposed on a person convicted 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 execution of the works to which the scheduled monument enforcement notice relates.

9ZH Effect of scheduled monument consent on notice

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
- (a) for the retention of any work to which the notice relates; or
 - (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.
- (2) The notice ceases to have effect in so far as it—
- (a) requires the work or works to cease;
 - (b) requires steps to be taken involving the works not being retained; or
 - (c) requires steps to be taken for complying with that condition.

S 12(1)

Scheduled monuments: temporary stop notices

9ZI Temporary stop notice

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
- (a) specify the works in question;
 - (b) prohibit execution of the works (or so much of them as is specified in the notice);
 - (c) set out the Welsh Ministers’ reasons for issuing the notice; and

S 13(1)

- (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
- (a) to be carrying out the works or causing them to be carried out; or
 - (b) to have an interest in the monument or land.
- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable).
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—
- (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
 - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

S 13(1)

9ZJ Temporary stop notice: power of entry

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes —

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display or removal of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);

- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

9ZK Temporary stop notice: offence

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
 - (a) which has been served on the person; or
 - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
 - (a) that the works were urgently necessary in the interests of safety or health; and
 - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted 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.

S 13(1)

9ZL Temporary stop notice: compensation

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.

- (2) But subsection (1) applies only if—
 - (a) the works specified in the notice do not contravene section 2(1) or (6); or
 - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
 - (a) the claimant was required to provide information under section 57, and
 - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.

S 13(1)

Scheduled monuments: injunctions

9ZM Injunctions

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
- (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.

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26 Power of entry on land believed to contain an ancient monument

- (1) A person duly authorised in writing by the Secretary of State may at any reasonable time enter any land in, on or under which the Secretary of State knows or has reason to believe there is an ancient monument for the purpose of inspecting the land (including any building or other structure on the land) with a view to recording

any matters of archaeological or historical interest.

- (2) Subject to subsection (3) below, a person entering any land in exercise of the power conferred by subsection (1) above may carry out excavations in the land for the purpose of archaeological investigation.
- (3) No excavation shall be made in exercise of the power conferred by subsection (2) above except with the consent of every person whose consent to the making of the excavation would be required apart from this section.

(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.

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27 **General provisions as to compensation for depreciation under Part I**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 or, in relation to land in Scotland, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) This section applies to any compensation payable under ~~section 7 or 9~~ section 1AD, 7, 9 or 9ZL of this Act in respect of any loss or damage consisting of depreciation of the value of an interest in land.

S 4(3) and
S 13(2)

- (3) Where an interest in land is subject to a mortgage--
 - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);

and

- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

28 Offence of damaging certain ancient monuments

- (1) A person who without reasonable excuse destroys or damages any protected monument situated in England - S 16(2)
 - (a) knowing that it is a protected monument; and
 - (b) intending to destroy or damage the monument or being reckless as to whether the monument would be destroyed or damaged;

shall be guilty of an offence.

- (1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—
 - (a) knew or ought reasonably to have known that it was a protected monument; and
 - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.
- }
- S 16(3)

- (2) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the execution of excepted works, as it applies to anything done by any other person.

In this subsection "excepted works" means works for which scheduled monument consent has been given under this Act (including any consent granted by order under section 3) or for which development consent has been granted.

- (3) In this section "protected monument" means any scheduled monument and any monument under the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act.
- (4) A person guilty of an offence under this section shall be liable--
 - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

29 Compensation orders for damage to monuments under guardianship in England and Wales

Where the owner or any other person is convicted of an offence involving damage to a monument situated in England and Wales which was at the time of the offence under the guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, any compensation order made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in respect of that damage shall be made in favour of the Secretary of State or the Commission or the local authority in question (as the case may require).

30 Disposal of land acquired under Part I

- (1) Subject to the following provisions of this section, the Secretary of State or the Commission or any local authority may dispose of any land acquired by them under section 10, 11 or 21 of this Act.
- (1A) The Secretary of State shall consult with the Commission before disposing of any land situated in England under this section.
- (1B) The Commission shall consult with the Secretary of State before disposing of any land under this section.
- (2) A local authority shall consult with the Secretary of State before disposing of any land under this section.
- (3) Subject to subsection (4) below, where the land in question is or includes a monument, the Secretary of State or the Commission or the local authority (as the case may be) may only dispose of it on such terms as will in their opinion ensure the preservation of the monument.
- (4) Subsection (3) above does not apply in any case where the Secretary of State or the Commission or the local authority (as the case may be) are satisfied that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

31 Voluntary contributions towards expenditure under Part I

The Secretary of State or any local authority may receive voluntary

contributions for or towards the cost of any expenditure incurred by them under this Part of this Act (whether in relation to any particular monument or land or otherwise).

32 Interpretation of Part I

- (1) In this Part of this Act "maintenance" and "maintain" have the meanings given by section 13(7) of this Act, and expressions to which a meaning is given for the purposes of the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990 or (as regards Scotland) for the purposes of the Town and Country Planning (Scotland) Act 1997 or the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 have the same meaning as in the said Acts of 1990 or (as the case may require) as in the said Acts of 1997.
- (2) References in this Part of this Act to a monument, in relation to the acquisition or transfer of any monument (whether under a power conferred by this Part of this Act or otherwise), include references to any interest in or right over the monument.
- (3) For the purposes of this Part of this Act the Secretary of State or the Commission or a local authority are the owners of a monument by virtue of this Act if the Secretary of State or the Commission or the local authority (as the case may be) have acquired it under section 10, 11 or 21 of this Act.

Part III

Miscellaneous and Supplemental

Register of historic parks and gardens in Wales

41A Register of historic parks and gardens in Wales

- (1) The Welsh Ministers must compile and maintain a register (to be known as "the register of historic parks and gardens") of such of the following grounds in Wales as appear to them to be of special historic interest—
 - (a) parks,
 - (b) gardens,
 - (c) designed ornamental landscapes,
 - (d) places of recreation,
 - (e) other designed grounds.
- (2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of

S 18(1)

- grounds of a description referred to in subsection (1)—
- (a) any building or water on, or adjacent or contiguous to, those grounds, or
 - (b) any land adjacent or contiguous to those grounds.
- (3) For the purpose of maintaining the register, the Welsh Ministers may from time to time modify it by—
- (a) adding an entry,
 - (b) removing an entry, or
 - (c) amending an entry.
- (4) As soon as reasonably practicable after including grounds in the register or modifying the register, the Welsh Ministers must inform—
- (a) the owner of the grounds in question,
 - (b) if the owner is not the occupier, the occupier, and
 - (c) each local authority or National Park Authority in whose area the grounds are situated.
- (5) Where the Welsh Ministers include grounds in the register or modify the register under subsection (3)(a) or (c), the duty to inform under subsection (4) also includes a duty to send each of the persons concerned a copy of the entry or modified entry (as the case may be).
- (6) The Welsh Ministers must publish the up-to-date register in such manner as they think appropriate.
- S 18(1)

Restrictions on use of metal detectors

42 Restrictions on use of metal detectors

- (1) If a person uses a metal detector in a protected place without the written consent of the Commission (in the case of a place situated in England) or of the Secretary of State (in any other case) he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (2) In this section--
- "metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground; and
- "protected place" means any place which is either--
- (a) the site of a scheduled monument or of any monument under

the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act; or

- (b) situated in an area of archaeological importance.
- (3) If a person without written consent removes any object of archaeological or historical interest which he has discovered by the use of a metal detector in a protected place he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine. The reference in this subsection to written consent is to that of the Commission (where the place in question is situated in England) or of the Secretary of State (in any other case).
- (4) A consent granted by the Secretary of State or the Commission for the purposes of this section may be granted either unconditionally or subject to conditions.
- (5) If any person--
 - (a) in using a metal detector in a protected place in accordance with any consent granted by the Secretary of State or the Commission for the purposes of this section; or
 - (b) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in a protected place in accordance with any such consent;

fails to comply with any condition attached to the consent, he shall be guilty of an offence and liable, in a case falling within paragraph (a) above, to the penalty provided by subsection (1) above, and in a case falling within paragraph (b) above, to the penalty provided by subsection (3) above.

- (6) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.
- (7) In any proceedings for an offence under subsection (1) or (3) above relating to a protected place situated in England, it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was.

S 17(2)

(8) In proceedings for an offence under subsection (1) or (3) relating to a protected place situated in Wales, it is a defence for the accused to prove that the accused—

- (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place; and

S 17(3)

(b) did not know, and had no reason to believe, that the place was a protected place.

S 17(3)

Powers of entry

43 Power of entry for survey and valuations

- (1) Any person authorised under this section may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that or any other land under this Act or in connection with any claim for compensation under this Act in respect of any such acquisition or for any damage to that or any other land.
- (2) A person is authorised under this section if he is an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by the Secretary of State or other authority proposing to make the acquisition which is the occasion of the survey or valuation or (as the case may be) from whom in accordance with this Act compensation in respect of the damage is recoverable.
- (3) Subject to section 44(9) of this Act, the power to survey land conferred by this section shall be construed as including power to search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals therein.

44 Supplementary provisions with respect to powers of entry

- (1) A person may not in the exercise of any power of entry under this Act, other than that conferred by section 43, enter any building or part of a building occupied as a dwelling house without the consent of the occupier.
- (2) Subject to the following provisions of this subsection, a person may not in the exercise of any power of entry under this Act demand admission as of right to any land which is occupied unless prior notice of the intended entry has been given to the occupier--
 - (a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under section 26 or 38 of this Act), not less than fourteen days before the day on which admission is demanded; or
 - (b) in any other case, not less than twenty-four hours before admission is demanded.

This subsection does not apply in relation to the power of entry under section 5 of this Act.

- (3) A person seeking to enter any land in exercise of any power of entry under this Act shall, if so required by or on behalf of the owner or occupier thereof, produce evidence of his authority before entering.
- (4) Any power of entry under this Act shall be construed as including power for any person entering any land in exercise of the power of entry to take with him any assistance or equipment reasonably required for the purpose to which his entry relates and to do there anything reasonably necessary for carrying out that purpose.
- (5) Without prejudice to subsection (4) above, where a person enters any land in exercise of any power of entry under this Act for the purpose of carrying out any archaeological investigation or examination of the land, he may take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis.
- (6) Subject to subsection (7) below, where any works are being carried out on any land in relation to which any power of entry under this Act is exercisable, a person acting in the exercise of that power shall comply with any reasonable requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with or delay to the works.
- (7) Any requirements or conditions imposed by a person by whom any works are being carried out shall not be regarded as reasonable for the purposes of subsection (6) above if compliance therewith would in effect frustrate the exercise of the power or the purpose of the entry; and that subsection does not apply where the works in question are being carried out in contravention of section 2(1) or (6) or 35 of this Act.
- (8) Any person who intentionally obstructs a person acting in the exercise of any power of entry under this Act shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (9) Where under section 43 of this Act a person proposes to carry out any works authorised by virtue of subsection (3) of that section--
 - (a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (2)(a) above; and
 - (b) if the land in question is held by statutory undertakers, and those undertakers object to the proposed works on the grounds that the carrying out thereof would be seriously

detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the Secretary of State.

Financial provisions

45 Expenditure on archaeological investigation

- (1) The Secretary of State may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land (other than land in England) which he considers may contain an ancient monument or anything else of archaeological or historical interest.
- (1A) The Commission may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in England which they consider may contain an ancient monument or anything else of archaeological or historical interest; and the reference to an ancient monument in this subsection shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.
- (2) Any local authority may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in or in the vicinity of their area, being land which they consider may contain an ancient monument or anything else of archaeological or historical interest.
- (3) The Secretary of State or the Commission or any local authority may publish the results of any archaeological investigation undertaken, assisted, or wholly or partly financed by them under this section in such manner and form as they think fit.
- (4) Without prejudice to the application, by virtue of section 53 of this Act, of any other provision of this Act to land which is not within Great Britain, the powers conferred by this section shall be exercisable in relation to any such land which forms part of the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (or, as regards the powers mentioned in subsection (1A) above, England).

46 Compensation for damage caused by exercise of certain powers under this Act

- (1) Subject to subsection (2) below, where, in the exercise in relation to any land of any power to which this section applies, any damage has been caused to that land or to any chattels on that land, any person interested in that land or those chattels may recover

compensation in respect of that damage from the Secretary of State or the Commission or other authority by or on whose behalf the power was exercised.

- (2) Where any such damage is caused in the exercise of any such power by or on behalf of any person for the time being holding appointment as the investigating authority for an area of archaeological importance under section 34 of this Act, compensation shall be recoverable in accordance with this section from the Commission (if the area in question is situated in England) or from the Secretary of State (in any other case).
- (3) This section applies to any power to enter, or to do anything, on any land under any of the following sections of this Act, that is to say, sections 6, 6A, [9ZF](#), [9ZJ](#), 26, 38, 39, 40 and 43.
- (4) References in subsection (1) above to chattels shall be construed in relation to Scotland as references to moveables.

S 12(2) and
S 13(3)

47 General provisions with respect to claims for compensation under this Act

- (1) Any claim for compensation under this Act shall be made within the time and in the manner prescribed.
- (2) Any question of disputed compensation under this Act shall be referred to and determined by the Upper Tribunal or (in the case of any land situated in Scotland) by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 or (as the case may be) of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, but the references in section 4 of the Act of 1961 and section 11 of the Act of 1963 to the acquiring authority shall be construed as references to the authority by whom the compensation claimed is payable under this Act.

Application to special cases

50 Application to Crown land

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section--
 - (a) a monument which for the time being is Crown land may be included in the Schedule; and
 - (b) any restrictions or powers imposed or conferred by any of the provisions of this Act shall apply and be exercisable in relation to Crown land and in relation to anything done on

Crown land otherwise than by or on behalf of the Crown, but not so as to affect any interest of the Crown therein.

- (2) Except with the consent of the appropriate authority--
 - (a) no power under this Act to enter, or to do anything, on any land shall be exercisable in relation to land which for the time being is Crown land; and
 - (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part I of this Act.
- (3) In relation to any operations proposed to be carried out on Crown land otherwise than by or on behalf of the Crown, an operations notice served under section 35 of this Act shall not be effective for the purposes of that section unless it is accompanied by a certificate from the appropriate authority in the prescribed form consenting to the exercise in relation to that land in connection with those operations of the powers conferred by sections 38 and 40 of this Act.

(3A) Crown land may be included in the register of historic parks and gardens (see section 41A).

S 18(2)

- (4) In this section "Crown land" means land in which there is a Crown interest or a Duchy interest; "Crown interest" means an interest belonging to Her Majesty in right of the Crown, or belonging to a Government department, or held in trust for Her Majesty for the purposes of a Government department, and includes any estate or interest held in right of the Prince and Steward of Scotland; "Duchy interest" means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and for the purposes of this section "the appropriate authority", in relation to any land--
 - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the Government department having the management of that land;
 - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
 - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
 - (d) in the case of land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

In this subsection "Government department" includes any Minister of the Crown.

51 Ecclesiastical property

- (1) Without prejudice to the provisions of the Acquisition of Land (Authorisation Procedure) Act 1946 with respect to notices served under that Act, where under any of the provisions of this Act a notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Diocesan Board of Finance for the diocese in which the land is situated.
- (2) Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant it shall for the purposes of this Act be treated as being vested in the Diocesan Board of Finance for the diocese in which the land is situated.
- (3) Any sum which under section 7, 9 or 46 of this Act is payable in relation to land which is ecclesiastical property, and apart from this subsection would be payable to an incumbent, shall be paid to the Diocesan Board of Finance for the diocese in which the land is situated, to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale.
- (4) Where any sum is recoverable under section 8 of this Act in respect of land which is ecclesiastical property the Diocesan Board of Finance for the diocese in which the land is situated may apply any money or securities held by it in the payment of that sum.
- (5) In this section "ecclesiastical property" means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

52 Application to the Isles of Scilly

The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application to those Isles of the provisions of this Act--

- (a) as if those Isles were a district and the Council of the Isles were the council of that district; and
- (b) in other respects subject to such modifications as may be specified in the order.

52A The Broads

Parts I and II and section 45(2) and (3) of this Act shall apply, in relation to the Broads (as defined by the Norfolk and Suffolk Broads Act 1988), as if the Broads Authority were a local authority.

53 Monuments in territorial waters

- (1) A monument situated in, on or under the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (referred to below in this section as a monument in territorial waters) may be included in the Schedule under section 1(3) of this Act, and the remaining provisions of this Act shall extend accordingly to any such monument which is a scheduled monument (but not otherwise).

- (2) The entry in the Schedule relating to any monument in territorial waters shall describe the monument as lying off the coast of England, or of Scotland, or of Wales; and, subject to subsection (2B), any such monument shall be treated for the purposes of this Act as situated in the country specified for the purposes of this subsection in the entry relating to the monument in the Schedule.

S 20(1)

(2A) The functions under this Act conferred on the Welsh Ministers by the Historic Environment (Wales) Act 2015 (as well as those already transferred to them) are exercisable in relation to Wales within the meaning of the Government of Wales Act 2006 (c. 32) (which includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of that Act)).

S 20(2)

(2B) Accordingly, a monument is not to be treated by virtue of section 53(2) as being in Wales unless it is situated in Wales within the meaning of section 158(1) of the Government of Wales Act 2006 (c.32).

- (3) In relation to any monument in territorial waters which is under the ownership or guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, references in this Act to land associated with the monument (or to associated land) include references to any part of the sea bed occupied by the Secretary of State or by the Commission or by a local authority for

any such purpose relating to the monument as is mentioned in section 15(1) of this Act.

- (4) Without prejudice to any jurisdiction exercisable apart from this subsection, proceedings for any offence under this Act committed in United Kingdom territorial waters adjacent to the coast of Great Britain may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (5) It is hereby declared that, notwithstanding that by virtue of this section this Act may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom.
- (6) A constable shall on any monument in territorial waters have all the powers, protection and privileges which he has in the area for which he acts as constable.
- (7) References in this section to the sea bed do not include the seashore or any other land which, though covered (intermittently or permanently) by the sea, is within Great Britain.

Supplemental

54 Treatment and preservation of finds

- (1) Where a person enters any land in exercise of any power of entry under this Act for any of the following purposes, that is to say--
 - (a) to carry out any excavations in the land or any operations affecting any ancient monument situated in, on or under the land;
 - (b) to observe any operations on the land in exercise of the power under section 6(3)(a) or (4)(b) or 6A(2)(a) of this Act; or
 - (c) to carry out any archaeological examination of the land;he may take temporary custody of any object of archaeological or historical interest discovered during the course of those excavations or operations or (as the case may be) during the course of that examination, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.
- (2) The Secretary of State or other authority by or on whose behalf the power of entry was exercised may not retain the object without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying

out any test or treatment which appears to the Secretary of State or to that other authority to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

- (3) Nothing in this section shall affect any right of the Crown under the Treasure Act 1996.

55 Proceedings for questioning validity of certain orders, etc

- (1) If any person--

- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it; or
- (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it;

he may, within six weeks from the relevant date, make an application under this section to the High Court or (in Scotland) to the Court of Session.

- (2) This section applies to any designation order and to any order under section 33(4) of this Act varying or revoking a designation order.
- (3) This section applies to action on the part of the Secretary of State of either of the following descriptions, that is to say--
- (a) any decision of the Secretary of State on an application for scheduled monument consent; and
- (b) the giving by the Secretary of State of any direction under section 4 of this Act modifying or revoking a scheduled monument consent.

(3A) This section applies to a decision on a review under section 1AE (review by Welsh Ministers or appointed person). S 4(4)

- (4) In subsection (1) above "the relevant date" means--
- (a) in relation to an order, the date on which notice of the making of the order is published (or, as the case may be, first published) in accordance with Schedule 2 to this Act; and
- (b) in relation to any action on the part of the Secretary of State,

the date on which that action is taken.

- (5) On any application under this section the High Court or (in Scotland) the Court of Session--
 - (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;
 - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action in whole or in part.
- (6) In this section "the relevant requirements" means--
 - (a) in relation to any order to which this section applies, any requirements of this Act or of any regulations made under this Act which are applicable to that order; and
 - (b) in relation to any action to which this section applies, any requirements of this Act or of the Tribunals and Inquiries Act 1992 or of any regulations or rules made under this Act or under that Act which are applicable to that action.
- (7) Except as provided by this section, the validity of any order or action to which this section applies shall not be questioned in any legal proceedings whatsoever; but nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take a decision on an application for scheduled monument consent.

56 Service of documents

- (1) Any notice or other document required or authorised to be served under this Act may be served either--
 - (a) by delivering it to the person on whom it is to be served; or
 - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
 - (c) by sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or

(ca) in a case where—

- (i) the notice or other document relates to a monument situated in Wales or land in Wales; and
- (ii) an address for service using electronic communications has been given by that person,
by sending it using electronic communications, in accordance with the condition set out in subsection (1A); or

S 21(1)

- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(1A) The condition mentioned in subsection (1)(ca) is that the notice or document must be—

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

S 21(2)

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

- (2) Where any such notice or document is required or authorised to be served on any person as being the owner or occupier of any monument or other land--

- (a) it may be addressed to the "owner" or (as the case may require) to the "occupier" of that monument or land (describing it) without further name or description; and
- (b) if the usual or last known place of abode of the person in question cannot be found, it may be served by being affixed conspicuously to the monument or to some object on the site of the monument or (as the case may be) on the land.

(3) In this section, “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32) (see section 158(1) of that Act).

S 21(3)

57 Power to require information as to interests in land

- (1) For the purpose of enabling the Secretary of State or the Commission or a local authority to exercise any function under this Act, the Secretary of State or the Commission or the local authority may require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land to state in writing the nature of his interest therein, and the name and address of any other person known to him as having an interest therein, whether as a freeholder, owner . . . mortgagee, lessee, or otherwise.
- (2) Any person who, having been required under this section to give any information, fails without reasonable excuse to give that information, shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect of it, shall be guilty of an offence and liable--
 - (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment to a fine.

58 Offences by corporations

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.
- (2) In subsection (1) above the expression "director", in relation to any body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

59 Prosecution of offences: Scotland

Notwithstanding anything in section 136 of the Criminal Procedure

(Scotland) Act 1995, summary proceedings in Scotland for an offence under this Act may be commenced at any time within one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to his knowledge; and a certificate purporting to be signed by the prosecutor stating that date shall be conclusive.

60 Regulations and orders

- (1) Any order or regulations made under this Act may make different provision for different cases to which the order or (as the case may be) the regulations apply.

(1A) Any power of the Welsh Ministers to make regulations or an order under this Act includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate. S 39(1)

- (2) Any power of the Secretary of State to make regulations under this Act, and the power to make orders under sections 3, 37, 52, 61 and 65 of this Act shall be exercisable by statutory instrument; and any statutory instrument containing any such regulations or order, other than one containing regulations under section 19 of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power of the Welsh Ministers to make regulations under this Act or an order under section 3, 37 or 61 is exercisable by statutory instrument.

(4) A statutory instrument containing regulations under section 1AA or 9ZB may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(5) Any other statutory instrument containing such regulations or an order made by the Welsh Ministers under this Act, other than regulations under section 19, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

S 39(2)

61 Interpretation

- (1) In this Act—

“address”, in relation to electronic communications, means a number or address used for the purposes of such communications; S 21(4)

"ancient monument" has the meaning given by subsection (12) below;

"area of archaeological importance" means an area designated as such under section 33 of this Act;

"the Commission" means the Historic Buildings and Monuments Commission for England;

"designation order" means an order under that section;

"development consent" means development consent under the Planning Act 2008;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000; S 21(4)

"enactment" includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament;

"flooding operations" means covering land with water or any other liquid or partially liquid substance;

"functions" includes powers and duties;

"guardianship deed" has the meaning given by section 12(6) of this Act;

"interim protection" has the meaning given by section 1AB(3); S 4(5)

"land" means--

- (a) in England and Wales, any corporeal hereditament;
- (b) in Scotland, any heritable property;

including a building or a monument and, in relation to any acquisition of land, includes any interest in or right over land;

"local authority" means--

- (a) in England . . . , the council of a county or district, . . . the council of a London borough, and the Common Council of the City of London;
- (aa) in Wales, the council of a county or county borough; and
- (b) in Scotland, the planning authority within the meaning of Part IX of the Local Government (Scotland) Act 1973;

"monument" has the meaning given by subsection (7) below;

"owner", in relation to any land in England and Wales means (except for the purposes of sections 9ZA and 9ZB and paragraph 2(1) of Schedule 1 to this Act and any regulations made for the purposes of that paragraph) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or S 11(2)(a)

where the land is not let at a rack rent, would be so entitled if it were so let;

"possession" includes receipt of rents and profits or the right to receive rents and profits (if any);

"prescribed" means prescribed by regulations made by the Secretary of State;

"the Schedule" has the meaning given by section 1(1) of this Act;

"scheduled monument" has the meaning given by section 1(11) of this Act and references to "scheduled monument consent" shall be construed in accordance with section 2(3) and (3B) and 3(5) of this Act; S 6(2)

"tipping operations" means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land; and

"universal postal service provider" means a universal service provider within the meaning of Part 3 of the Postal Services Act 2011; and references to the provision of a universal postal service shall be construed in accordance with that Part;

"works" includes operations of any description and, in particular (but without prejudice to the generality of the preceding provision) flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of the Town and Country Planning Act 1990 or, as regards Scotland, the Town and Country Planning (Scotland) Act 1997) or forestry (including afforestation).

(2) In this Act "statutory undertakers" means--

- (a) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of . . . , . . . or hydraulic power;
- (b) . . . the Civil Aviation Authority, . . . a universal postal service provider in connection with the provision of a universal postal service and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for any of the purposes of the Town and Country Planning Act 1990 or of the Town and Country Planning (Scotland) Act 1997; and
- (c) any other authority, body or undertakers specified in an order made by the Secretary of State under this paragraph.

(2A) The undertaking of a universal postal service provider so far as

relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.

(2B) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act; and

(b) the communication is received by that person outside that person's business hours,

it is to be treated as having been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

S 21(5)

- (3) For the purposes of sections 14(1) and 21(2) of this Act and paragraph 6(1)(b) and (2)(b) of Schedule 3 to this Act a person shall be taken to be immediately affected by the operation of a guardianship deed relating to any land if he is bound by that deed and is in possession or occupation of the land.
- (4) For the purposes of this Act "archaeological investigation" means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land--
 - (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and
 - (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.
- (5) For the purposes of this Act, an archaeological examination of any land means any examination or inspection of the land (including any buildings or other structures thereon) for the purpose of obtaining and recording any information of archaeological or historical interest.
- (6) In this Act (other than in section 9ZA) references to land associated with any monument (or to associated land) shall be construed in accordance with section 15(6) of this Act.
- (7) "Monument" means (subject to subsection (8) below)--

S11(2)(b)

- (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
- (b) any site comprising the remains of any such building, structure or work or of any cave or excavation; **and** S 22(2)(a)
- (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a) above; **and**
- (d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity; } S 22(2)(b)

and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(7A) In subsection (7)(d) "Wales" has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32). S 22(3)

- (8) Subsection (7)(a) above does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes, and subsection (7)(c) above does not apply--
 - (a) to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest;
 - (b) to a site comprising, or comprising the remains of, any vessel which is protected by an order under section 1 of the Protection of Wrecks Act 1973 designating an area round the site as a restricted area.
- (9) For the purposes of this Act, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or the Commission or a local authority, in the exercise in relation to that monument of any of their functions under this Act, to be essential for the monument's support and preservation.
- (10) References in this Act to a monument include references--
 - (a) to the site of the monument in question; and
 - (b) to a group of monuments or any part of a monument or group of monuments.
- (11) References in this Act to the site of a monument--
 - (a) are references to the monument itself where it consists of a site; and

- (b) in any other case include references to the monument itself.
- (12) "Ancient monument" means--
- (a) any scheduled monument, and
 - (b) any other monument which in the opinion of the Secretary of State is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.
- (13) In this section "remains" includes any trace or sign of the previous existence of the thing in question.

SCHEDULE A1

introduced by section 1AC

LAPSE OF INTERIM PROTECTION

- 1 This Schedule applies where interim protection ceases to have effect in relation to a monument as a result of the issue of a notice under section 1AB(4)(b) or (5)(b).
- 2 The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 2, 9ZG, 9ZK, 28 or 42 committed with respect to the monument while the interim protection had effect.
- 3 Any proceedings on or arising out of an application for scheduled monument consent with respect to the monument lapse, in so far as they relate to consent required by virtue of the interim protection; and any such consent granted lapses to the same extent.
- 4 (1) Any scheduled monument enforcement notice served by the Welsh Ministers with respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.

(2) Any proceedings on or arising out of such a notice under section 9ZE or 9ZF(4) lapse, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.

(3) Notwithstanding sub-paragraph (1), section 9ZF(2) continues to have effect as respects any expenses incurred by a person authorised by the Welsh Ministers as mentioned in section 9ZF(1), and with respect to any sums paid on account of such expenses.
- 5 Any temporary stop notice served by the Welsh Ministers with

S 3(3) and
Schedule 1

respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.

- 6 Any proceedings on an application made by the Welsh Ministers under section 9ZM with respect to the monument lapse, in so far as they relate to the restraint of any actual or apprehended contravention in relation to anything in respect of which the interim protection had effect.

SCHEDULE A2

introduced by section 1AE

DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH MINISTERS

Decisions on reviews by appointed persons

- 1 (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 1AE on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.
- (2) Decisions on reviews of a prescribed class are to be made accordingly.
- (3) This paragraph does not affect any provision in this Act or any instrument made under it that an application for a review is to be made to the Welsh Ministers.
- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

Powers and duties of appointed person

- 2 (1) An appointed person has the same powers and duties in relation to a review under section 1AE as the Welsh Ministers have under—
- (a) subsections (3)(a) and (b) and (5) of that section; and
- (b) regulations made by virtue of subsection (6)(e), (f) or (g) of that section.
- (2) Where an appointed person makes a decision on a review, the decision is to be treated as that of the Welsh Ministers.
- (3) Except as provided by section 55, the validity of that decision is not to be questioned in any legal proceedings.
- (4) No application may be made to the High Court under section 55 on

S 3(3) and
Schedule 1

the ground that a decision on a review ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person's power to make the decision before the decision is made.

Appointment of another person to make a decision on a review

- 3 (1) At any time before an appointed person has made a decision on a review under section 1AE the Welsh Ministers may—
- (a) revoke the person's appointment; and
 - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

Public local inquiries, hearings and written representations

- 4 (1) An appointed person may appoint an assessor to provide advice on—
- (a) any matters arising at a public local inquiry or hearing held by the appointed person in connection with a review under section 1AE or in consequence of such an inquiry or hearing;
 - or
 - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (c.70) (local inquiries: evidence) applies to a public local inquiry held by an appointed person.

Directions

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 1AE, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.

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Schedule 1

(2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

Delegation

6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 1AE, other than—

(a) the conduct of a public local inquiry or hearing; and

(b) the making of a decision on the review under subsection (3)(b) of that section.

(2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

S 3(3) and
Schedule 1

Supplementary provision

7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 (c.10) as functions of the Welsh Government.

SCHEDULE 1

CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

Sections 2, 4

Part I

Applications for Scheduled Monument Consent

- 1 (1) Provision may be made by regulations under this Act with respect to the form and manner in which applications for scheduled monument consent are to be made, the particulars to be included therein and the information to be provided by applicants or (as the case may be) by the Secretary of State in connection therewith.
- (2) Any scheduled monument consent (including scheduled monument consent granted by order under section 3 of this Act) shall (except so far as it otherwise provides) enure for the benefit of the monument and of all persons for the time being interested therein.

(3) The Welsh Ministers may by regulations make provision as to cases in which an applicant for scheduled monument consent in relation to a monument situated in Wales may make the application otherwise than in the form provided for under sub-paragraph (1); and such provision may confer a discretion on the Welsh Ministers.

S 5(2)

- 2 (1) The Secretary of State may refuse to entertain an application for scheduled monument consent unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say--
- (a) a certificate stating that, at the beginning of the period of twenty-one days ending with the application, no person other than the applicant was the owner of the monument;
 - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons other than the applicant who, at the beginning of that period, were owners of the monument;
 - (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) above as are specified in the certificate, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
 - (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) above, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the persons mentioned in paragraph (b) above and that he has been unable to do so.
- (2) Any certificate issued for the purposes of sub-paragraph (1) above--
- (a) shall contain such further particulars of the matters to which the certificate relates as may be prescribed by regulations made for the purposes of this paragraph; and
 - (b) shall be in such form as may be so prescribed,
- and any reference in that sub-paragraph to the requisite notice is a reference to a notice in the form so prescribed.
- (3) Regulations made for the purposes of this paragraph may make provision as to who, in the case of any monument, is to be treated

as the owner for those purposes.

- (4) If any person issues a certificate which purports to comply with the requirements of this paragraph or of regulations made by the Welsh Ministers under it and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.

S 7

2A As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State shall send a copy of the application to the Commission.

- 2B (1)** The Welsh Ministers may refuse to entertain an application for scheduled monument consent if—
- (a) within the period of 2 years ending with the date on which the application is received, the Welsh Ministers have refused a similar application; and
 - (b) in their opinion, there has been no significant change in any material considerations since the similar application was refused.
- (2)** The Welsh Ministers may refuse to entertain an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.
- (3)** For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the works to which the applications relate are, in the Welsh Ministers' opinion, the same or substantially the same.

S 8

- 3 (1)** The Secretary of State may grant scheduled monument consent in respect of all or any part of the works to which an application for scheduled monument consent relates.
- (2)** Before determining whether or not to grant scheduled monument consent on any application therefor, the Secretary of State shall either--
- (a) cause a public local inquiry to be held; or
 - (b) afford to the applicant, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(2A) In the application of this paragraph to the Welsh Ministers, subparagraph (2) has effect as if for “shall” there were substituted “may”.

S 9

- (3) Before determining whether or not to grant scheduled monument consent on any application therefor the Secretary of State--
 - (a) shall in every case consider any representations made by any person with respect to that application before the time when he considers his decision thereon (whether in consequence of any notice given to that person in accordance with any requirements of regulations made by virtue of paragraph 2 above or of any publicity given to the application by the Secretary of State, or otherwise);
 - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it and
 - (c) shall, if the monument in question is situated in England, consult with the Commission.
 - (4) The Secretary of State shall serve notice of his decision with respect to the application on the applicant and on every person who has made representations to him with respect to the application.
- 4**
- (1) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in England and Wales as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.
 - (2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and expenses at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in Scotland as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.

Part II

Modification and Revocation of Scheduled Monument Consent

- 5** (1) Before giving a direction under section 4 of this Act modifying or revoking a scheduled monument consent the Secretary of State shall serve a notice of proposed modification or revocation on--

- (a) the owner of the monument and (if the owner is not the occupier) the occupier of the monument, and
 - (b) any other person who in the opinion of the Secretary of State would be affected by the proposed modification or revocation.
- (1A) Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before serving a notice under this paragraph, and on serving such a notice he shall send a copy of it to the Commission.
- (2) A notice under this paragraph shall--
 - (a) contain a draft of the proposed modification or revocation and a brief statement of the reasons therefor; and
 - (b) specify the time allowed by sub-paragraph (5) below for making objections to the proposed modification or revocation and the manner in which any such objections can be made.
- (3) Where the effect of a proposed modification (or any part of it) would be to exclude any works from the scope of the scheduled monument consent in question or in any manner to affect the execution of any of the works to which the consent relates, the notice under this paragraph relating to that proposed modification shall indicate that the works affected must not be executed after the receipt of the notice or (as the case may require) must not be so executed in a manner specified in the notice.
- (4) A notice of proposed revocation under this paragraph shall indicate that the works to which the scheduled monument consent in question relates must not be executed after receipt of the notice.
- (5) A person served with a notice under this paragraph may make an objection to the proposed modification or revocation at any time before the end of the period of twenty-eight days beginning with the date on which the notice was served.
- 6 (1) If no objection to a proposed modification or revocation is duly made by a person served with notice thereof in accordance with paragraph 5 above, or if all objections so made are withdrawn, the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in question in accordance with the notice.
- (2) If any objection duly made as mentioned in sub-paragraph (1) above is not withdrawn, then, before giving a direction under section 4 of this Act with respect to the proposed modification or revocation, the Secretary of State shall either--

- (a) cause a public local inquiry to be held; or
 - (b) afford to any such person an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State shall afford to each other person served with notice of the proposed modification or revocation in accordance with paragraph 5 above, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of being heard on the same occasion.
- (4) Before determining in a case within sub-paragraph (2) above whether to give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in accordance with the notice, the Secretary of State--
- (a) shall in every case consider any objections duly made as mentioned in sub-paragraph (1) above and not withdrawn; and
 - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it.
- (5) After considering any objections and report he is required to consider in accordance with sub-paragraph (4) above the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent either in accordance with the notice or with any variation appearing to him to be appropriate.
- 7** As soon as may be after giving a direction under section 4 of this Act the Secretary of State shall send a copy of the direction to each person served with notice of its proposed effect in accordance with paragraph 5 above and to any other person afforded an opportunity of being heard in accordance with paragraph 6(3) above.
- 8** (1) Where in accordance with sub-paragraph (3) of paragraph 5 above a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice, the works so specified shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (2) Where in accordance with that sub-paragraph a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice in a manner so specified, the works so specified shall not be regarded as authorised under

Part I of this Act if executed in that manner at any time after the relevant service date.

- (3) Where in accordance with sub-paragraph (4) of paragraph 5 above a notice under that paragraph indicates that the works to which the scheduled monument consent relates must not be executed after receipt of the notice, those works shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
 - (4) The preceding provisions of this paragraph shall cease to apply in relation to any works affected by a notice under paragraph 5 above--
 - (a) if within the period of twenty-one months beginning with the relevant service date the Secretary of State gives a direction with respect to the modification or revocation proposed by that notice in accordance with paragraph 6 above, on the date when he gives that direction;
 - (b) if within that period the Secretary of State serves notice on the occupier or (if there is no occupier) on the owner of the monument that he has determined not to give such a direction, on the date when he serves that notice; and
 - (c) in any other case, at the end of that period.
 - (5) In this paragraph "the relevant service date" means, in relation to a notice under paragraph 5 above with respect to works affecting any monument, the date on which that notice was served on the occupier or (if there is no occupier) on the owner of the monument.
- 9**
- (1) Subject to sub-paragraph (2) below, subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public inquiry held in pursuance of paragraph 6(2) above as they apply where a Minister or the Secretary of State causes an inquiry to be held under sub-section (1) of that section.
 - (2) Subsection (4) of that section (costs of the Minister causing the inquiry to be held to be defrayed by such local authority or party to the inquiry as the Minister may direct) shall not apply except in so far as the Secretary of State is of opinion, having regard to the object and result of the inquiry, that his costs should be defrayed by any party thereto.
 - (3) In the application of this paragraph to Scotland, in sub-paragraph (1) for the words " subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries)" there shall be substituted the words " subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and

expenses at local inquiries)", and in sub-paragraph (2) for the words " subsection (4) of that section (costs" there shall be substituted the words " subsection (7) of that section (expenses".

Number: WG24306

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-12-15 Papur 8 Atodiad 4 / Paper 8 Annexe 4



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Historic Environment (Wales) Bill

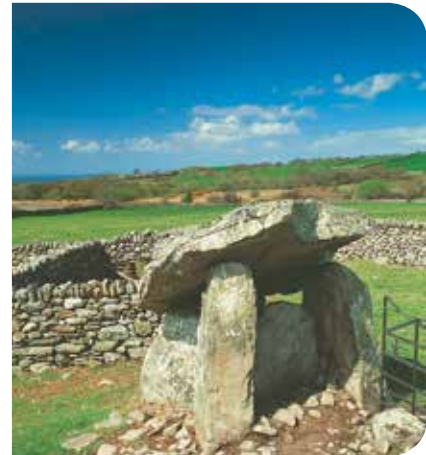
Complementary document for consideration

Draft

Managing Historic Environment Records in Wales – Statutory Guidance

This document is a draft that has been prepared for consideration alongside the Historic Environment (Wales) Bill. It is intended to provide Assembly Members, stakeholders and members of the public with an understanding of the policy, advice and guidance that will complement the legislation after its enactment.

Some sections of this document are dependent upon the provisions of the Historic Environment (Wales) Bill as introduced to the National Assembly for Wales on 1 May 2015. This document is therefore liable to changes following the scrutiny of the Bill by the National Assembly and any consequent amendments to the legislative provisions. Following those changes, the document will be subject to a full public consultation prior to publication. That consultation is likely to take place in 2016.



1 May 2015

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Historic Environment Records in Wales Statutory Guidance



Llywodraeth Cymru
Welsh Government

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 **Cadw**

Statement of Purpose

The Menai Bridge is a grade II listed structure.



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Managing Historic Environment Records is statutory guidance which explains how local planning authorities must create and keep up to date historic environment records and provide access to them. It also sets out standards and benchmarks for the content and coverage, data standards, public access and engagement, service delivery and audit of historic environment records.

Local planning authorities must have regard to this statutory guidance, which is issued by the Welsh Ministers under the powers in section 36 of the Historic Environment (Wales) Bill¹, and will only be able to depart from it where they can provide justification for doing so.

Sections 33 and 34 of the Historic Environment (Wales) Bill require each local planning authority in Wales to create and keep up to date a publically accessible historic environment record.²

Section 35 of the Historic Environment (Wales) Bill allows local planning authorities the choice to create, manage and maintain their own historic environment record or to discharge their functions through another person or organisation, either individually or jointly with another local planning authority.³

Historic Environment Records provide information about the historic environment of Wales for public benefit and use. They play a key role in the planning process as the evidence base for decision-making and underpin historic environment policy and advice provided through *Planning Policy Wales*, Chapter 6: The Historic Environment and Technical Advice Note 24: Historic Environment.

Contents

Grade II* listed ironworkers' housing at Forge Row, Cwmavon. This is the finest surviving terrace of industrial housing in the south Wales valleys still in its original location.



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Introduction

The historic environment of Wales has been shaped by past generations. It highlights where we have come from and enhances our quality of life. The history that surrounds us gives us a sense of place and helps to define us as a nation. The historic environment is also a fragile, vulnerable, non-renewable and finite resource. Our ambition to provide effective protection and management of the historic environment relies on access to good quality, authoritative information.

Cors y Gedol burial chamber is a scheduled monument. It is considered to be of national importance because of its potential to enhance our knowledge of prehistoric burial and ritual practices.



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Under the provisions of the Historic Environment (Wales) Bill,⁴ each local planning authority in Wales must create and keep up to date a historic environment record (HER) for their administrative area. The local planning authority must also make its HER publically accessible, and provide advice and assistance to those wishing to retrieve and understand the information that it contains.

Section 35 of the Historic Environment (Wales) Bill allows local planning authorities the choice to create, manage and maintain their own historic environment record or to discharge their functions through another person or organisation, either individually or jointly with another local planning authority.

This guidance explains the role and responsibilities of local planning authorities, the Welsh Government and

the Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) with respect to HERs. It also sets out standards and benchmarks for the content and coverage, data standards, public access and engagement, service delivery and audit of historic environment records.

This guidance does not address related aspects of historic environment information management by local planning authorities, such as the systematic documentation of business processes in back-office systems — including pre-application discussions, consent applications and enforcement actions. Nor is it aimed at records relating to the historic environment developed by major landowners, such as Defence Estates or the National Trust, or other bodies.

I. Historic Environment Records

I.1 What is a Historic Environment Record?

The historic environment includes all aspects of our surroundings that have been built, formed or influenced by human activities from earliest to most recent times. A HER is the store for systematically organised information about the historic environment in a given area and can be accessed by anyone. It is maintained and updated for public benefit.

HERs contain and signpost information about historic landscapes, buildings, archaeological sites and finds. They also contain the records of people involved in investigating the historic environment, sources of information about their areas and the conservation management process. HER content represents decades of collection and collation of information from a wide range of sources, including early Ordnance Survey records, the National Monuments Record of Wales (maintained by RCAHMW), museums, archives and libraries. They also include information from the general public and the results of archaeological fieldwork.

A HER comprises a digital database linked to a geographic information system (GIS) which is supported by associated reference material. Reference material may be digital or paper and include aerial photographs, copies of early maps and antiquarian reports, characterisation studies, unpublished 'grey' literature and a reference library of secondary sources.

A HER is a dynamic and constantly evolving resource which requires continuous maintenance and enhancement as new information about the historic environment comes to light. As such, a HER can never be a definitive record. A HER requires an appropriately qualified and dedicated staffing resource for its upkeep and use by the public.

The baseline content required of a HER, as outlined in the Historic Environment (Wales) Bill,⁵ is provided in section 3.1.

Archaeological excavations produce information which should be stored in the historic environment record.



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1.2 What is a Historic Environment Record Used For?

HER services provide access to information about the historic environment of Wales for public benefit and fulfil a wide variety of functions which include:

- advancing knowledge and understanding of the historic environment
- supporting the conservation, management and protection of the historic environment
- informing strategic policies and local development plans
- informing development management decisions
- supporting heritage-led regeneration, environmental improvement and cultural tourism initiatives
- contributing to education and social inclusion
- promoting public participation in the exploration, appreciation and enjoyment of local heritage.

In Wales, HERs have developed from the sites and monuments records which were established in the 1970s by the four Welsh archaeological trusts to assist their own work programmes and to provide archaeological information and advice for owners, developers, planners and other stakeholders. An overview of HER services in Wales is provided in Annex 1.

HER services can contribute to education and social inclusion.



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1.3 How Does a Historic Environment Record Relate to Other Records?

In addition to HERs, there are other sources of information about the historic environment. At national level the Welsh Government is the primary source for records relating to monuments and buildings in state care and designated historic assets of national importance including listed buildings, scheduled monuments, designated wrecks and registered historic parks and gardens. Public access to mapped and description data for these historic assets is through the Welsh Government's historic environment service, Cadw.⁶

The RCAHMW maintains the National Monuments Record of Wales which is the national archive for the historic environment of Wales. Online public access to the National Monuments Record of Wales is provided through Coflein.⁷ RCAHMW also maintains and develops the Historic Wales portal⁸ as an online gateway to the national and regional records, and curates the maritime record for the territorial waters of Wales.

Amgueddfa Cymru — National Museum Wales and regional and local museums hold records relating to the archaeological finds and historic collections in their care.

A Framework for Records Relating to the Historic Environment of Wales has been established between the principal holders (listed above) of such records to ensure data sharing and collaboration.

Dolbadarn Castle is a scheduled monument in the direct care of Cadw on behalf of the Welsh Government.



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2. Roles and Responsibilities

2.1 Local Planning Authorities

Under section 33 of the Historic Environment (Wales) Bill, local planning authorities have a duty to create and keep up to date a publically accessible HER for their administrative areas.⁹ Advice and assistance must be made available to those wishing to retrieve and understand the information that HERs contain. It is expected that HERs meet the standards set out in this guidance (see Annex 2).

Local planning authorities may choose:

- to create, manage and maintain their own HER or
- to work with other local planning authorities to create, manage and maintain a joint HER or
- to discharge their functions by adopting and supporting a HER developed and maintained by a third party. This can be independent or with other local planning authorities.

If a local planning authority decides to discharge its functions either jointly with another authority or through a third party then it must be through a formal agreement and subject to written approval by the Welsh Ministers. Consequently, the Welsh Ministers must be consulted at an early stage (together with the potential service provider). When considering such approval, the Welsh

Ministers will make reference to the standards set out in this guidance.

Local planning authority HER services, or their chosen service provider, must meet the standards set out in this guidance. All local planning authority HERs (including those operated by a third party) will be subject to audit by the RCAHMW (see section 2.3).

When local planning authority HER functions are exercised by a third party, responsibility for what is done (or not done) remains with the local planning authority, so that democratic accountability and normal public law remedies are preserved.

Historically, Welsh Office Circular 60/96 (Planning and the Historic Environment) advised local planning authorities without their own archaeological staff and sites and monuments records to make 'full use of the expertise of the Welsh Archaeological Trusts in development control and planning advice, preferably by formally adopting the regional Sites and Monuments Records maintained by the Trusts'.

In practice, all local planning authorities in Wales have adopted the four regional HERs, which is the term now given to the sites and monuments records. They are maintained by the Welsh archaeological trusts through memoranda of understanding between the parties.

Capel Jerusalem, Bethesda, is listed grade I. The richly detailed 1870s interior is of exceptional interest.



2.2. Welsh Government

Under the provisions of the Historic Environment (Wales) Bill,¹⁰ the Welsh Ministers may issue guidance for HERs but are required to consult with each local planning authority and such other persons or organisations as they consider appropriate.

The Welsh Ministers will monitor the effective discharge of local planning authority duties with respect to HER services by reviewing services against the standards set out in this guidance. In the event that a local planning authority fails to discharge its HER services satisfactorily, the Welsh Ministers will then work with the local planning authority, and the HER service provider if applicable, to agree a plan to rectify failings.

Point of Ayr lighthouse is listed grade II. It is a well-preserved example of an early lighthouse.



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2.3 The Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW)

The RCAHMW¹¹ was established in 1908 and currently derives its role and responsibilities from the Royal Warrant of 2000. It works as a Welsh Government Sponsored Body (WGSB) which receives its core funding from the Welsh Government. Since 1964 the RCAHMW has been responsible for the curation of the National Monuments Record of Wales.

The National Monuments Record of Wales is the national public archive and inventory for the historic environment of Wales, in parallel with similar archives in England and Scotland. It holds records compiled through the work of the RCAHMW's investigative activities as well as records contributed by a wide range of other organisations and private individuals.

Under its operational arrangements with the Welsh Government, the RCAHMW has responsibility for the oversight of records relating to the historic environment. On behalf of the Welsh Government, the RCAHMW will monitor the standards and service levels of all local planning authority adopted HERs by coordinating and validating audits on a five-year cycle to review data quality, evidence performance against each of the indicators and identify needs for enhancement. A summary of the audit should be published on the HER's website.

Listed grade II, Pencae, near Rhiw, is a well-preserved cottage and byre characteristic of the region.



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3. Content and Coverage

3.1 Content

This section provides a list of what HERs are expected to contain under section 33 of the Historic Environment (Wales) Bill¹² and explains the minimum requirements for each of these categories.

(a) Details of every building in the local planning authority's area which is included in a list compiled or approved by the Welsh Ministers under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9).¹³

Penarth House, near Newtown, Powys, is a grade II listed building.



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(b) Details of every area in the local planning authority's area which is designated under section 69 of that Act as a conservation area.¹⁴

Part of Dolgellau has been designated a conservation area.



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(c) Details of every monument in the local planning authority's area which is included in the Schedule compiled and maintained by the Welsh Ministers under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46).¹⁵

World War II anti-invasion defences on Fairbourne beach, Gwynedd, are scheduled as a monument of national importance.



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(d) Details of each of the grounds in the local planning authority's area which are included in the register of historic parks and gardens compiled and maintained by the Welsh Ministers under section 41A of that Act.¹⁶



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The gardens at Aberglasney are included in the register of historic parks and gardens as a grade II site.*

Historic assets that are statutorily protected or registered under the 1979 or 1990 Acts (a-d)

Cadw, on behalf of the Welsh Ministers, is responsible for identifying and designating listed buildings (a), scheduled monuments (c), and registered historic parks and gardens (d). The definitive and up-to-date lists of each of these categories of historic asset are managed by Cadw. The HER must contain the latest information on

all of these groups of assets that are relevant to the local planning authority's area, as and when they are provided by Cadw, along with links to the online database that is maintained by Cadw.

The local planning authorities are responsible for defining and designating conservation areas (b). Details must be included within the local planning authority's HER.

(e) Details of every conflict site in the local planning authority's area which the authority considers to be of historic interest.



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The battle of Bryn Glas fought during the Welsh revolt led by Owain Glyndŵr is thought to have taken place here at Pilleth in Powys.

Conflict sites (e)

The Historic Environment (Wales) Bill defines a 'conflict site' as a battlefield or a site on which some other conflict involving military forces took place, or a site on which significant activities relating to a battle or other such conflict occurred.¹⁷

The RCAHMW is currently compiling an inventory of historic battlefields in Wales. The HER must contain the latest information on the entries in this inventory that are relevant to the local planning authority's area, as and when they are provided by the RCAHMW, along with links to the online database that is maintained by the RCAHMW.

(f) Where a public authority (whether by itself or jointly with other persons) maintains a list of historic landscapes in Wales, details of every historic landscape in the local planning authority's area which is included in the list.

The medieval field system at Rhossili on the Gower peninsula is recorded as a historic landscape.



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Historic Landscapes (f)

A register of historic landscapes has been compiled jointly by Cadw, ICOMOS (UK) and the Countryside Council of Wales (now part of Natural Resources Wales).¹⁸

The Welsh archaeological trusts have undertaken detailed historic landscape characterisation of each

of these registered historic landscapes. The HER must contain details of each of the registered historic landscapes that are relevant to the local planning authority's area, along with details of the associated characterisation work, and links to the online datasets that are hosted by the Welsh archaeological trusts.

(g) Details of every World Heritage Site in the local planning authority's area.

Conwy Castle and town walls is one of the four sites that make up the World Heritage Site of the Castles and Town Walls of King Edward in Gwynedd.



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World Heritage Sites (g)

The HER must contain details of every part of a World Heritage Site that is relevant to the local planning authority's area. The HER should provide a link to the most up-to-date management plan for that World Heritage Site and any relevant associated supplementary planning guidance.

(h) Details of every other area or site or other place in the local planning authority's area which the authority considers to be of historic, archaeological or architectural interest.

Many war memorials are important to local communities. Barry's Memorial Hall has been recognised as a locally important building.



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Other sites of historic, archaeological or architectural interest (h)

The majority of historic assets within a local planning authority's area do not enjoy statutory protection. However, they all contribute to a greater or lesser extent to its historic, archaeological or architectural interest.

Entries might include non-scheduled archaeological sites, non-listed historic buildings or structures, historic parks and gardens, battlefields and landscapes that do not appear on the relevant registers or inventories, or locations with important palaeo-environmental evidence. Entries might also include locations that do not have any visible physical evidence, but might be associated with a

historical, typographic or documentary reference, a place name or the find of an archaeological artefact.

Some local planning authorities maintain lists of historic assets of special local interest. Where such a list exists, the HER must contain the latest details of all entries on such a list.

In the case of a coastal local planning authority, whose area includes part of the sea shore, the HER may contain any maritime heritage that the local planning authority considers to be of historic, archaeological or architectural interest. The HER should include an appropriate link to the online Welsh maritime record that is maintained by the RCAHMW, which includes wreck sites and areas of high archaeological potential (see section 3.3).

(i) Information about the way in which the historic, archaeological or architectural development of the local planning authority's area or any part of it has contributed to the present character of the area or part and about how that character may be preserved.

The historic character of the town centre of MerthyrTydfil has been shaped by the local iron and coal industries.



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Historic character (i)

The HER must include any historic landscape characterisation (see also (f) above) that has been

undertaken, but also any characterisation that has been undertaken in townscape or seascape environments.

(j) Details of relevant investigations carried out in the local planning authority's area and of the findings of those investigations.

Investigations can take many forms: these footprints on the Gwent Levels are probably around 7,500 years old.



© Copyright, National Museum of Wales

Relevant investigations (j)

The HER must include details of relevant historical or archaeological investigation that has been undertaken in the local authority's area including the findings of those investigations. Such investigations might include

desk-based assessments, historic analysis, archaeological, topographic or geophysical surveys and archaeological interventions (including surface artefact collections, test pitting, trial trenching, archaeological excavation and palaeo-environmental sampling).

Criccieth Castle is a scheduled monument of national importance in the direct care of Cadw on behalf of the Welsh Government.



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The content of a HER must be documented in a professionally maintained and indexed dataset held on an appropriate digital information system in textual, graphic and map formats, as appropriate.

There should be clear mechanisms for signposting and accessing up-to-date statutory, definitive and other information relating to the historic environment held by other organisations.

3.2 Temporal Limits

There should be no temporal limits on the information recorded in a HER: it should include data relating to all periods, from the earliest human activity to the present day.

3.3 Geographic Limits

These will be defined by the administrative boundary of the local authority that a HER covers. In the case of local planning authority areas that include coastline, seaward extension of a HER's geographic coverage beyond the administrative boundary is likely to enhance the authority's contribution to the processes of Integrated Coastal Zone Management and marine planning, as well as providing a more complete picture of their area's past. For example, to record the impact on cultural heritage of coastal erosion or rises in sea level as a consequence of current and past climate change. However, such decisions will continue to be at the discretion of individual local planning authorities.

The RCAHMW maintains the Welsh maritime record which comprises records of offshore shipping and aviation casualties, and areas of high archaeological potential. This record is part of the National Monuments Record of Wales and is available for use by the local planning authority and is used by the Welsh Government in offshore planning.

3.4 Maintaining the Currency of the Historic Environment Record Content

HERs require active management if they are to reflect properly the changing nature of the historic environment and our understanding of its significance.¹⁹ HERs must be kept up to date with accurate information, including:

- new discoveries and interpretations
- new and amended designations
- latest research and publications
- records and outcomes of new investigations
- significant changes to the historic assets already recorded.

Such information will come from a variety of sources, ranging from chance finds by members of the public and unexpected discoveries by property owners, developers and land managers to systematic investigations undertaken as part of national surveys, university-led research, developer-funded fieldwork and recording, community projects or private research.

In particular, local planning authorities should make sure that information about heritage assets and the wider historic environment which is generated as part of the planning process is deposited into their HERs.

Ancient offshore fish traps near Poppit Sands, Pembrokeshire.



3.5 Supporting Reference Collections

A HER needs to hold collections of published reference materials and working copies of archival material that supplement the digital information contained in its database. Supporting reference collections serve a valuable role to answer enquiries. Collections should be housed and maintained in appropriate environmental and storage conditions to ensure their long-term preservation.

New work may reveal new information which should be added to the local HER.



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3.6 Deposit of Primary Archive Material

Original archival material that is managed or acquired by the HER (where the data creator does not have responsibility for deposition and/or no enforcement options are available) should be deposited with an accredited archive such as the National Monuments Record of Wales. The RCAHMW can offer advice and should be consulted at an early stage whenever possible.

War memorial records can be useful additions to HERs.



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4. Data Standards

Bryn Cader Faner is a scheduled Bronze Age round cairn in Gwynedd.



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4.1 Compliance with UK National Data Standards

The information content of a HER must be compliant with current national data standards for historic environment information.²⁰

The RCAHMW facilitates the development and maintenance of data standards in Wales and convenes the Historic Environment Data Standards Working Group for Wales.

4.2 Data Sharing

HERs should be capable of providing, and of receiving and incorporating digital data in formats designed to assist the exchange of data between appropriate

compatible information systems. In particular, they should be interoperable with the corporate GIS systems and back-office planning systems of the local planning authorities which they cover.

The Framework for Records Relating to the Historic Environment of Wales has been established between the principal historic environment record holders in Wales. The framework is underpinned by principles of easy access, data sharing and collaboration to enable participating organisations to have the information necessary to further their business needs. HERs are expected to participate in the actions and priorities set out in the framework.

5. Public Access and Engagement

Section 34 of the Historic Environment (Wales) Bill requires local planning authorities to make their HERs available for public inspection and to respond to reasonable requests for copies of part of the record. It also requires the local planning authority to provide advice on and assistance with retrieving and understanding information contained in the record. As a result, the information held in HERs must, with few exceptions,²¹ be in the public domain.

Users of HERs typically include developers, planning/environmental consultants, statutory undertakers, property owners, land managers, farmers, academic researchers, local societies, amateur historians/archaeologists, teachers, students and interested members of the public — as well as historic environment professionals working in the public, private and voluntary sectors. Consequently, both conventional and online content may require mediation and interpretation, depending on the user.

Each user is likely to have specific needs, requiring different levels of support and varying timeliness of access. In order to maximise public access, a range of access arrangements will be required, including, for example, facilities for visitors to the HER and for handling telephone and electronic inquiries.

Many of these houses in Llanfairfechan are listed. List descriptions are held by Cadw.



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HER staff should be capable of delivering an effective service to all users, while also managing other demands on their time. A specified response time should be published for enquiries and this should be viewed as a maximum response time. HERs should be proactive in improving their service for users by collecting and acting upon feedback.

Local planning authorities should be proactive in promoting access to HERs. It is good practice to develop an outreach programme that advocates the HER and promotes its wider use. This is essential for:

- identifying and targeting new audiences for the HER
- retaining and encouraging existing HER users
- creating opportunities for the participation of local communities in the maintenance and enhancement of the HER
- developing synergies with outreach delivered by other heritage and environmental services.

Local planning authorities must signpost their HER services on their websites.

Relevant online content should also be made accessible through the Historic Wales portal maintained by the RCAHMS, and other appropriate gateway sites, such as Archwilio.²²

Public access to the local HER at Dyfed Archaeological Trust's offices.



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6. Service Delivery

Clydach Ironworks, near Brynmawr, has been conserved and displayed for public understanding and appreciation.



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6.1 Plans, Policies and Services

In order to manage a HER effectively, HER services must develop relevant plans and policies that are agreed and regularly reviewed to comply with the standards and benchmarks set out in Annex 2.

6.2 Staff

HER service providers must employ dedicated, appropriately qualified and competent curatorial staff to create their record and keep it up to date, and to communicate effectively with the diverse audiences that use it.

Staffing should include personnel with the qualifications and experience appropriate for compiling, curating, interpreting and mediating access to an extended range of historic environment information resources.

Maintaining the skills of HER staff is essential if they are to provide high-quality information and advisory services. They should therefore have access to relevant continuing professional development (CPD) and training.

6.3 Infrastructure

Sufficient space must be provided to allow the effective daily operation of the HER, including provision for public access and for the storage of non-digital resources. Robust data storage, security and risk management procedures must be implemented to protect against, detect and correct malicious behaviour so that critical technology and services are resilient to disruptive challenges such as cyber-attacks. All software must have clear and up-to-date system documentation, particularly where it is bespoke.

7. Fee Charging

The grade II listed Moranedd Cafe, Criccieth, was designed by Clough Williams-Ellis.



Public access to a HER must be provided free of charge. However, section 34 of the Historic Environment (Wales) Bill²³ allows for fees to be charged for services that require and consume resources, namely:

- providing a copy of part of the HER, such as the reproduction and supply of copies of information held in the HER
- providing advice and assistance, such as the provision of a priority service by HER staff
- compiling documents containing information derived from the HER, such as the production of reports based on analyses of HER content.

Fees are intended to recover the costs of these services. Fee-charging policies must be set out in a record access policy (together with any other terms and conditions of use, including copyright and licensing arrangements).

8. Compliance

Local planning authorities must satisfy themselves that plans and policies relating to their record are compliant with relevant legislation, including but not restricted to:

- The Disability Discrimination Act 1995²⁴
- The Data Protection Act 1998²⁵
- The Freedom of Information Act 2000²⁶
- The Environmental Information Regulations 2004²⁷
- Welsh Language Standards²⁸

Local planning authorities must satisfy themselves that policies for the management of their record are

compliant with UK copyright law.²⁹ As a general rule, copyright in relation to the content of a HER should be established and protected in a way that ensures its unrestricted public use for the future.

In practice, content will come from a wide variety of sources. Those contributing information must be advised that it will be in the public domain and a waiver of copyright ownership signed wherever possible.

HERs will need to take account of third party copyrights and licences relating to material they acquire in order to avoid infringements.

The earthwork ramparts of the Iron Age hillfort of Coed y Bwynydd. It is a scheduled monument.



Annexes

Annex I: Historic Environment Records in Wales

In Wales there are currently four regional HERs compiled and maintained by the four Welsh archaeological trusts (Clwyd-Powys, Dyfed, Glamorgan-Gwent and Gwynedd). Together, these regional HERs provide a comprehensive catalogue comprising approximately 200,000 individual entries of archaeological and historic sites and finds of all periods throughout Wales.

The four HERs in Wales descend directly from the sites and monuments records (SMRs) established in the 1970s by the four Welsh archaeological trusts. The SMRs were compiled to assist the trusts' work programmes and in response to the lack of archaeological information available to owners, developers and planners, and the consequent loss of archaeological remains through urban and rural development.

Together, these four HERs provide a comprehensive coverage of the whole of Wales:

- Clwyd-Powys HER (maintained by the Clwyd-Powys Archaeological Trust) — Denbighshire, Flintshire, Wrexham, Powys, part of the Brecon Beacons National Park, part of Conwy)
- Dyfed HER (maintained by Dyfed Archaeological Trust) — Pembrokeshire, Carmarthenshire, Ceredigion, Pembrokeshire Coast National Park and part of Brecon Beacons National Park
- Glamorgan-Gwent HER (maintained by the Glamorgan-Gwent Archaeological Trust) — Swansea, Neath Port Talbot, Rhondda Cynon Taff, Bridgend, The Vale of Glamorgan, Cardiff, Merthyr Tydfil, Caerphilly, Blaenau Gwent, Monmouthshire, Torfaen, Newport and part of the Brecon Beacons National Park
- Gwynedd HER (maintained by the Gwynedd Archaeological Trust) — Isle of Anglesey, Gwynedd, Snowdonia National Park and part of Conwy.

In 2008, ownership of the regional HERs was transferred to four HER charitable trusts. However, the HERs continue to be managed and maintained by the four Welsh archaeological trusts.

Online public access to the regional HERs is available through Archwilio.³⁰ The system has been developed through a partnership of the four Welsh archaeological trusts to provide wider public access to this valuable resource.



Annex 2: Historic Environment Record Standards and Benchmarks

Welsh HERs must meet the following standards. A series of benchmarks have been produced against which all HERs will be assessed. The benchmarks have been developed by the RCAHMMW following discussion with key stakeholders.

The standards require HERs to meet benchmarks in five key areas:

1. Audit
2. Content and coverage
3. Data standards
4. Public access and engagement
5. Service delivery

I. Audit

Benchmark 1: A five-year audit that measures the HER and its services against the benchmarks. Annual forward plans for improving services and addressing comments from user feedback and a five-yearly audit report.

Indicators:

- a) A five-year information audit to review compliance with the HER benchmarks, assess the quality of data and identify needs for enhancement.
- b) A five-year forward plan that identifies priorities for enhancement work based on user feedback and the results of the information audit.
- c) A mechanism for consulting key stakeholders and service users for the development of forward plans.

2. Content and Coverage

Benchmark 2: A HER including site, event and bibliography information that complies with the requirements of section 33 of the Historic Environment (Wales) Bill.³¹

Indicators:

- a) Regularly updated data.
- b) Comprehensive coverage of the historic environment resource.
- c) An information system integrating spatial data with text-based, digital and hard-copy information.

Benchmark 3: A supporting reference collection of hard-copy and digital material that is catalogued and managed.

Indicators:

- a) Supporting reference material must be housed and maintained in appropriate environmental conditions.
- b) The catalogue of reference collections must be cross-indexed with the computerised record.
- c) A programme for digitising material under the direct management of the HER should be included in annual forward plans where appropriate.

Benchmark 4: Statement of policy for depositing primary archive.

Indicators:

- a) Primary archive (digital and non-digital) managed or acquired by the HER should be deposited with an accredited archive such as the National Monuments Record of Wales.
- b) A disposal policy for staged transfers, including time criteria, will be required.

3. Data Standards

Benchmark 5: Compliance with national data standards.

National data standards are defined by the MIDAS Heritage compliance profile for historic environment records.³² Effective searching (and cross-searching) of a HER relies upon the quality of the data indexing and the existence of good spatial data and mapping. Use of nationally agreed terminology is vital. INSCRIPTION³³ is a collection of agreed terminology 'wordlists' maintained or recommended by the Forum on Information Standards in Heritage (FISH).³⁴ This is the definitive source of information about the national terminology standards that are recommended for use in conjunction with the MIDAS Heritage compliance profile.

Indicators:

- a) Compliance with the basic MIDAS Heritage compliance profile as applied in Wales and with terminology agreed by the Historic Environment Data Standards Working Group for Wales.
- b) Compliance with national standards for spatial data and guidance on GIS good practice.
- c) A supporting recording manual that sets out data input rules, protocols and standards.
- d) Participation in the Historic Environment Data Standards Working Group for Wales to develop, promote and implement data standards in Wales.

Benchmark 6: Data sharing and exchange with other relevant organisations.

Indicators:

- a) A regular programme of sharing and exchanging information with other information providers in the historic environment sector under the terms of the Framework for Records Relating to the Historic Environment in Wales.
- b) Regular provision of data to Historic Wales in a format agreed with the RCAHMW.

4. Public Access and Engagement

Benchmark 7: Facilities provided for user services including visitor, postal, telephone and online enquiries.

Indicators:

- a) An appropriately equipped and managed work area for users, including supervision by staff able to respond to enquiries.
- b) Arrangements for responding to visitor, postal, telephone and email enquiries within the published response times.
- c) Online free public access to at least the site index of the HER database via the internet.

Benchmark 8: An effective method of receiving feedback from visiting, remote and online users.

Indicators:

- a) A maintained record of users and their types of enquiry from both local and remote use (for example, web usage, telephone enquiries and visits by researchers).
- b) Systematically collected information on user satisfaction.

Benchmark 9: Outreach activities based on the HER to promote wider knowledge and use of the HER.

Indicator:

- a) Develop and identify outreach activities to develop new audiences and promote wider use of resources based on user responses and market research. These might range from new media and data formats to exhibitions, leaflets, trails, open days, field programmes, etc.

5. Service Delivery

Benchmark 10: Policies and services are clearly defined and available for users electronically and in hard copy.

Indicators:

- a) Written policies setting out the levels of service:
 - The purposes for which the HER is maintained.
 - The scope, geographic coverage and content of information resources accessible through the service (digital, non-digital and reference collections).
 - The professional and public user groups it aims to serve.
 - Records access, including arrangements for servicing the needs of different types of user.
 - Arrangements for depositing primary archival materials.
- b) Publication of details of public use, including opening hours and charging policy.

Benchmark 11: Staff to manage the HER and its services.

Indicators:

- a) Staff should include personnel with qualifications, experience, and membership of relevant professional bodies appropriate for managing an extended range of historic environment information resources.
- b) A training plan to support continued staff development.

Benchmark 12: Infrastructure and support agreements for critical systems and a service continuity plan.

Indicators:

- a) Policies for data and information system security that mitigate applicable threats.
- b) Risk assessment and emergency preparedness plan to protect service continuity.
- c) Arrangements for information system support.
- d) A record of information use by visiting and remote enquirers to identify and trace any misuse of information supplied by the HER.
- e) Periodic review of support agreements.

References

- 1 Historic Environment (Wales) Bill, Part 4, Section 36 [↗](#)
- 2 Historic Environment (Wales) Bill, Part 4, Sections 33 and 34 [↗](#)
- 3 Historic Environment (Wales) Bill, Part 4, Section 35 [↗](#)
- 4 Historic Environment (Wales) Bill, Part 4, Sections 33–36 [↗](#)
- 5 Historic Environment (Wales) Bill, Part 4, Section 33 [↗](#)
- 6 Cadw is the Welsh Government's historic environment service working for an accessible and well-protected historic environment for Wales www.gov.wales/cadw [↗](#)
- 7 Coflein www.coflein.gov.uk [↗](#)
- 8 Historic Wales www.historicwales.gov.uk [↗](#)
- 9 Historic Environment (Wales) Bill, Part 4, Section 33 [↗](#)
- 10 Historic Environment (Wales) Bill, Part 4, Section 36 [↗](#)
- 11 RCAHMW www.rcahmw.gov.uk [↗](#)
- 12 Historic Environment (Wales) Bill, Part 4, Section 33 [↗](#)
- 13 Planning (Listed Buildings and Conservation Areas) Act 1990, Section 1 [↗](#)
- 14 Planning (Listed Buildings and Conservation Areas) Act 1990, Section 69 [↗](#)
- 15 Ancient Monuments and Archaeological Areas Act 1979, Section 1 [↗](#)
- 16 Ancient Monuments and Archaeological Areas Act 1979, Section 41A [↗](#)
- 17 Historic Environment (Wales) Bill, Part 4, Section 33 (3) [↗](#)
- 18 ICOMOS UK www.icomos-uk.org; Natural Resources Wales <http://naturalresources.wales> [↗](#)
- 19 For significance, refer to Cadw's Conservation Principles for the Sustainable Management of the Historic Environment in Wales, 2011 [↗](#)
- 20 MIDAS Heritage – The UK Historic Environment Data Standard, v1.1 [↗](#)
- 21 Exceptions?? [↗](#)
- 22 Historic Wales www.historicwales.gov.uk; Archwilio www.archwilio.org.uk provides public access to the four regional HERs maintained by the Welsh archaeological trusts [↗](#)
- 23 Historic Environment (Wales) Bill, Part 4, Section 34 [↗](#)
- 24 The Disability Discrimination Act 1995 [↗](#)
- 25 The Data Protection Act 1998 [↗](#)
- 26 Freedom of Information Act 2000 [↗](#)
- 27 The Environmental Information Regulations 2004 [↗](#)
- 28 Welsh Language Standards (Welsh Ministers, County and County Borough Councils, and National Park Authorities) Regulations 2015 [↗](#)
- 29 Copyright, Designs and Patent Act 1988 [↗](#)
- 30 Archwilio www.archwilio.org.uk [↗](#)
- 31 Historic Environment (Wales) Bill, Part 4, Section 33 [↗](#)
- 32 MIDAS Heritage compliance profile <https://www.historicengland.org.uk/images-books/publications/midas-heritage/> [↗](#)
- 33 INSCRIPTION [↗](#)
- 34 Forum on Information Standards in Heritage (FISH) [↗](#)

Further Information

Historic Environment (Wales) Bill

Planning Policy Wales – Chapter 6: The Historic Environment

Technical Advice Note 24: Historic Environment

MIDAS Heritage – The UK Historic Environment Data Standard, v1.1

INSCRIPTION

Forum on Information Standards in Heritage (FISH)

Historic Wales portal

www.historicwales.gov.uk

Archwilio – public access to the four HERs maintained by the Welsh archaeological trusts www.archwilio.org.uk

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Gwynedd Archaeological Trust

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www.heneb.co.uk

Local Planning Authorities

Local planning authorities' conservations officers can be contacted via the relevant local authority website.

The bridge at Crickhowell, Powys, is a grade I listed structure and a scheduled monument.



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