

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.~~ } S 27(1)(a)
- (2) The issue of a certificate under subsection (A1) ~~or (1)~~ in respect of a building shall-- S 27(1)(b)
 - (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)—

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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

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(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

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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 Englandy.

- (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 commenced.

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;

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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.

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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

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- (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.

S 24(4) and
Schedule 2

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.

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)