

**Explanatory Memorandum to:**

- The Listed Buildings (Exempt Religious Buildings) (Wales) Regulations 2024
- The Scheduled Monument (Partnership Agreements) (Wales) Regulations 2024
- The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024
- The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024
- The Applications for Scheduled Monument Consent (Wales) Regulations 2024
- The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024

This Explanatory Memorandum has been prepared by Cadw (Education, Culture and Welsh Language Group) and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the above regulations.

**Jane Hutt MS**

**Cabinet Secretary for Culture, Social Justice, Trefnydd and Chief Whip**

**11 September 2024**

## **PART 1**

### **1. Description**

These regulations are part of a package of secondary legislation which brings into force and implements the Historic Environment (Wales) Act 2023 ('the 2023 Act'). The 2023 Act received Royal Assent in June 2023, is a consolidation and restates primary and secondary legislation and incorporates some related caselaw and practice. These regulations restate secondary legislation relating to the designation, protection and management of the historic environment in Wales. They also make consequential amendments to secondary legislation.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

The 2023 Act forms part of a code of law relating to the historic environment of Wales. In the same way as the overview in section 1 of the 2023 Act, the substantive regulations declare that they are part of the same code of law. This declaration of status is intended to help persons interested in the law on a particular topic — the historic environment in this instance — find and classify it more easily. There is more information about codes of law in paragraphs 8 to 10 of the Explanatory Notes to the 2023 Act - [Historic Environment \(Wales\) Act 2023 - Explanatory Notes \(legislation.gov.uk\)](https://legislation.gov.uk)

The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024 are not part of the code.

The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017 (SI 2017/643) and the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017 (SI 2017/644) have not been restated. They are amended by the Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024 because limited changes were required to harmonise them with the 2023 Act. Provision, however, is made to make them part of the historic environment code.

### **3. Legislative background**

Parts 2 to 5 and Part 7 of the 2023 Act provide for various powers and duties to the Welsh Ministers to make regulations in relation to the designation and management of the historic environment in Wales.

The regulations are made under the negative resolution procedure.

### **4. Purpose and intended effect of the legislation**

The 2023 Act is the first consolidation Act in the Welsh Government's initial five-year programme to improve the accessibility of Welsh law [The future of Welsh law: revised accessibility programme 2021 to 2026 | GOV.WALES](https://gov.wales). This historic piece of legislation provides fully bilingual law for the effective protection and management of

our unique historic environment so that it can continue to contribute to the well-being of Wales and its people.

The Counsel General's accessibility programme also includes a commitment to make the subordinate legislation required to implement the 2023 Act.

The subordinate legislation does not reflect any change in policy and restates current legislation with the aim of clarifying its application and effect and omitting provisions which are now contained in the 2023 Act. Details of provisions which were previously in regulations but which have been incorporated in the 2023 Act can be found on pages 32 to 36 of the Table of Destinations published with the 2023 Act - [https://www.legislation.gov.uk/asc/2023/3/pdfs/asctod\\_20230003\\_en\\_001.pdf](https://www.legislation.gov.uk/asc/2023/3/pdfs/asctod_20230003_en_001.pdf)

The regulations replace legislation made under the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990. Those Acts will no longer apply to Wales once the 2023 Act comes into force, except for section 49 of the 1990 Act. Restatement has provided an opportunity to modernise the language and change the organisation of some of the regulations.

#### *The Listed Buildings (Exempt Religious Buildings) (Wales) Regulations 2024*

These regulations replace the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018 (SI 2018/1087). They exempt the listed buildings of specified religious denominations from some of the provisions of the 2023 Act, notably the requirement to obtain listed building consent for certain works. Those denominations have shown that their internal systems of scrutiny and control are at least equivalent to the consent procedures of the planning authorities.

#### *The Scheduled Monument (Partnership Agreements) (Wales) Regulations 2024;*

#### *The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024.*

These regulations replace the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021 (SI 2021/1177) and the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021 (SI 2021/1176). Partnership agreements are voluntary agreements between a scheduled monument owner and the Welsh Ministers, or a listed building owner and a planning authority or the Welsh Ministers, for the long-term management of one or more assets. A partnership agreement may grant scheduled monument consent or listed building consent for an agreed programme of works to be carried out during the lifetime of the agreement.

The regulations make provision about the consultation and publicity requirements for agreeing and varying agreements.

#### *The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024*

These regulations replace the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (SI 2012/793), subsequent amendments to them and the Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales) Order 2017 (SI

2017/640). The regulations also incorporate the substance of the following Directions and withdraw them:

- the Listed Building Applications and Decisions (Duty to Notify National Amenity Societies and the Royal Commission) (Wales) Direction 2022,
- the Listed Building Consent Applications (Disapplication of Duty to Notify Welsh Ministers) (Wales) Direction (2017 No. 25), and
- the Conservation Areas (Disapplication of Requirement for Conservation Area Consent for Demolition) (Wales) Direction (2017 No. 27).

Part 1 of the regulations sets out procedural requirements for listed building consent applications, including requirements as to notification and publicity. The requirements are in addition to those in the 2023 Act.

Part 2 of the regulations makes further provision about the procedure for appeals in relation to applications for listed building consent, including about giving notice and variation. Similarly, the requirements are in addition to those in the 2023 Act.

Part 3 of the regulations makes further provision for special cases, being applications by planning authorities for demolition and applications in respect of Crown land, where there are alternative ways to proceed.

Part 4 of the regulations makes provision in relation to conservation areas based on the provisions for listed buildings.

Part 5 makes miscellaneous provision, including prescribing the interest rate for the cost of urgent works carried out under section 144 of the 2023 Act. It also introduces consequential amendments and revocations.

#### *The Applications for Scheduled Monument Consent (Wales) Regulations 2024*

These regulations replace the Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017 (SI 2017/642). The regulations make provision about applications for scheduled monument consent, including the form and content of an application, the materials that must accompany it and how it must be made.

#### *The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024*

These regulations make amendments to various secondary legislation which are consequential on the commencement of the 2023 Act. They mainly update references to old legislation now restated in the Act. They also reflect changes in terminology described in paragraph 22 of the Drafters' Notes to that Act, which can be found at:

[https://www.legislation.gov.uk/asc/2023/3/pdfs/ascod\\_20230003\\_en\\_001.pdf](https://www.legislation.gov.uk/asc/2023/3/pdfs/ascod_20230003_en_001.pdf)

## **5. Consultation**

No consultation has been undertaken on the regulations, as they reflect current policy and restate current procedures.

## **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has not been prepared for these regulations, as the regulations restate existing regulations. The regulations do not alter the policy or its impact in any significant way or how it is applied in a given situation. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.